TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940 1941

No. 686

GEORGE C. REITZ, APPELLANT,

vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK

FILED JANUARY 8, 1941.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1941.

[fol. 1]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

GEORGE C. REITZ, Plaintiff

vs.

CARROLL E. MEALEY, as Commissioner of Motor Vehicles of the State of New York, Defendant

COMPLAINT—Filed Oct. 26, 1940

Plaintiff complaining of the defendant respectfully alleges:

First. That plaintiff is a resident of the City and County of Albany and State of New York and a citizen of the United States.

Second. That on June 21, 1940, the plaintiff was duly adjudicated a bankrupt and his proceeding in bankruptcy was duly referred, and that the question of plaintiff's discharge has not yet been determined and the time therefor has not yet elapsed.

Third. That among plaintiff's debts scheduled therein under Schedule A-3 is a Judgment recovered against the plaintiff herein in the Supreme Court, Albany County, in favor of Anson Shafer in the sum of Five Thousand One Hundred Thirty Eight Dollars and Twenty Five Cents ($5138.25) resulting from a negligence action to recover damages for personal injuries arising out of the operation of an automobile by the plaintiff herein; and that the Complaint of the plaintiff, Anson Shafer, in said action did not allege that the defendant in such action, George C. Reitz, (plaintiff herein), caused said injuries by any wilful or malicious act on the part of the defendant therein (the plaintiff herein); and that said Complaint was not amended upon the trial of said action or at any other time to allege wilfulness or maliciousness on the part of the defendant therein (the plaintiff herein).

Fourth. That said Judgment was duly docketed in the Albany County Clerk's Office on December 15, 1939, and a copy of said Judgment with notice of entry thereof, was served upon the attorney for the plaintiff herein on Decem-

[fol. 2] ber 15, 1939, and a copy of said Judgment is annexed to and made a part of this Complaint.

Fifth. That at the time of the filing of the Schedules in Bankruptcy of the plaintiff herein this Judgment remained unsatisfied and the judgment creditor had issued a Property Execution against the property of the plaintiff, which Execution was duly returned unsatisfied by the Sheriff of the County of Albany, and the said judgment creditor had caused a Garnishee Execution against the wages of the plaintiff herein to be filed by the Sheriff of Albany County with plaintiff's employer, Callanan Road Improvement Company, at South Bethlehem, Albany County, New York.

Sixth. That the claim of the judgment creditor, Anson Shafer, and the Judgment obtained pursuant to said claim are dischargeable in bankruptcy.

Seventh. That prior to May 29, 1940, pursuant to a demand by John J. Scully, attorney for said judgment creditor, under the provisions of Sec. 94b. of the Vehicle & Traffic Law of the State of New York, the Clerk of the Supreme Court, Albany County, forwarded a Transcript of said Judgment, a copy of which is hereto annexed and made a part of this Complaint, to the Commissioner of Motor Vehicles of the State of New York, Carroll E. Mealey, with evidence by Affidavit of the said John J. Scully that said Judgment had remained unsatisfied for more than fifteen (15) days after the same had become final, all in due compliance with Sec. 94b. of the Vehicle & Traffic Law of the State of New York; that by authority of Sec. 94b. of the Vehicle & Traffic Law of the State of New York, Carroll E. Mealey, the Commissioner of Motor Vehicles of the State of New York, issued an Order, a copy of which is hereto annexed and made a part of this Complaint, suspending plaintiff's chauffeur's license until the Judgment hereinbefore mentioned is satisfied or discharged.

[fol. 3] Eighth. That said Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional and void as it is in violation of the Constitution of the United States and invades the field of bankruptcy, which by the United States Constitution is a power exclusively delegated to the Federal Government, in that said section, solely at the instigation of the judgment creditor, and not otherwise,

mandatorily requires the Commissioner of Motor Vehicles of the State of New York to suspend the plaintiff's license for a term of three (3) years, but permits the judgment creditor to consent to the restoration of such license immediately and from time to time, with the consent of the judgment creditor, and, therefore, upon terms solely within his control, and that the said section in effect is a means given to the judgment creditor to collect a Judgment dischargeable in bankruptcy; and that said Sec. 94b. violates the Fifth and Fourteenth Amendments to the Constitution of the United States.

Ninth. That if such Order of Suspension is allowed to remain in full force and effect irreparable damage will be done to the plaintiff since the use of his chauffeur's license in his employment is necessary and the plaintiff cannot retain his present employment, the only type of work for which he is fitted, without said license.

Tenth. That plaintiff has not yet surrendered his chauffeur's license to the Commissioner of Motor Vehicles.

Eleventh. That all proceedings on the part of the Commissioner of Motor Vehicles to enforce the suspension of plaintiff's chauffeur's license have been enjoined pending the disposition of this action.

Wherefore, plaintiff demands judgment that the aforesaid Sec. 94b. of the Vehicle & Traffic Law of the State of New York is in violation of the Constitution and Laws of the United States, is void and unconstitutional; and plaintiff [fol. 4] farther asks that the Commissioner of Motor Vehicles of the State of New York, Carroll E. Mealey, be temporarily and permanently restrained from enforcing such suspension of plaintiff's chauffeur's license and be mandatorily enjoined to withdraw his Order and Notice of Suspension of plaintiff's chauffeur's license; and that plaintiff have judgment that plaintiff's chauffeur's license cannot be suspended by the Commissioner of Motor Vehicles under Sec. 94b. of the Vehicle & Traffic Law of the State of New York; and for such other and further relief as to the Court seems just and proper, together with the costs of this action.

Harry A. Allan, Attorney for Plaintiff, Office & Post Office Address, 90 State Street, Albany, N. Y.

[fol. 5] In Supreme Court of New York, Albany County

Anson Shafer, Plaintiff

against

George Reitz, Defendant

Judgment

The issues in the above entitled action having been duly tried before Hon. William H. Murray, Justice of the Supreme Court, and a jury, at a term of this court held in and for the county of Albany at the County Court House in the city of Albany, New York, on the 6th day of December, 1939, and the jury having rendered its verdict in favor of the plaintiff and against the defendant in the sum of Five Thousand dollars ($5,000.00), and the costs of the plaintiff having been duly taxed in the sum of One hundred thirty-eight and 25/100 dollars ($138.25),

Now, on motion of John J. Scully, attorney for plaintiff, it is

Adjudged that the plaintiff recover of the defendant the sum of Five thousand dollars ($5,000.00) plus the sum of One hundred thirty-eight and 25/100 dollars ($138.25), costs as taxed, making in all the sum of Five thousand one hundred thirty-eight and 25/100 dollars ($5,138.25), and that the plaintiff have execution therefor.

Dated, December 15, 1939.

John A. Knox, Clerk.

[fol. 6] No. 940 Judgment Debtor In Favor of

Reitz, George
Ravena, N. Y.

Shafer, Anson
Selkirk, N. Y.

	Amount		Judgment Obtained	Docketed	Court	Attorneys	Execution
	Dollars	Cents					
Damages,	$5,000	00	Dec. 15	Dec. 15,	Supreme	John J. Scully	
Costs,	138	25	1939	1939	Roll Filed,	51 State St.	
Total,	$5,138	25		11:43 A.M.	Albany Co.	Albany, N. Y.	

Supreme Court,)
Albany County Clerk's Office)

I, John A. Knox, Clerk of Albany County, and Clerk of the Supreme and County Courts, do hereby certify that the foregoing is a correct transcript from the docket of Judgments kept in said Clerk's Office.

Witness my hand and official seal this 16th day of May 1940.

John A. Knox, Clerk.

(Here follow 2 photolithographs, side folios 7-7½)

M.V. 110-I. 11-8-37 5000 sets (3n 3020)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUREAU OF MOTOR VEHICLES

ORDER OF SUSPENSION OR REVOCATION OF LICENSE OR CERTIFICATE OF REGISTRATION

Order No. 418088

Dated May 29, 1940

Chauffeur's License No. 9306770

Certificate of Registration No. All 1940 regs.

Operator's License No. for current period

in the name of the person given below is hereby suspended until the judgment is satisfied or discharged and proof of Financial Responsibility is submitted.

IT IS ORDERED that the License ~~XX~~ and Certificate of Registration and Number Plates **BE SURRENDERED IMMEDIATELY UPON RECEIPT OF THIS ORDER** to the Commissioner of Motor Vehicles at his office at State Office Bldg., Albany, N.Y. (District Office - 1st floor)

CAUSE: Failure to satisfy final judgment of a Court, in compliance with Section 94-B of the Vehicle and Traffic Law. Judgment in favor of Anson Shafer. FINANCIAL RESPONSIBILITY REQUIRED

418088

George Reitz
Ravena, N. Y.
(Albany County)

CHARLES A. HARNETT,
~~XXXXXXXXXXXXXXXX~~
Commissioner of Motor Vehicles

by Carroll E. Mealey
CARROLL E. MEALEY,
Deputy Commissioner
~~XXXXX~~

R&D:H

7

(SEE OTHER SIDE)

(COPY TO LICENSEE OR REGISTRANT)

VEHICLE AND TRAFFIC LAW

ARTICLES 3 AND 5

1. *Failure of the holder* or any other person possessing the license card, registration certificate, or number plates, *to deliver* the same as herein ordered is a misdemeanor. (Section 71.)

2. Any operator or chauffeur operating a motor vehicle or motorcycle while his license is suspended or revoked shall be guilty of a misdemeanor. (Section 70, Subdivision 6.)

This order was made in pursuance of a record received in the Bureau of Motor Vehicles. If the person affected thereby claims an error has been made, this fact, with statement of reasons and certified court transcript, should be filed immediately with the Commissioner of Motor Vehicles.

7½

[fol. 8] *Duly sworn to by George C. Reitz. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 9] In United States District Court, Northern District of New York

[Title omitted]

Answer—Filed October 26, 1940

The defendant above named, by John J. Bennett, Jr., Attorney General of the State of New York, answering the complaint herein:

1. Admits the allegations contained in the paragraphs of said complaint numbered "First" "Second", "Third", "Fourth", "Seventh", "Tenth", and "Eleventh".

2. Admits the allegation contained in paragraph numbered "Fifth" of said complaint "That at the time of the filing of the schedules in bankruptcy of the plaintiff herein this judgment remained unsatisfied," but denies having knowledge or information sufficient to form a belief as to every other allegation in said paragraph contained.

3. Denies the allegations contained in the paragraphs of said complaint numbered "Sixth" and "Eighth".

4. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of said complaint numbered "Ninth".

Wherefore, the defendant demands judgment that the [fol. 10] complaint herein be dismissed, with costs and disbursements of this action.

John J. Bennett, Jr., Attorney General, State of New York, Office and Post Office Address, The Capitol, Albany, N. Y.

[fol. 11] *Duly sworn to by Leon Aronowitz. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 12] In United States District Court for the Northern District of New York

[Title omitted]

Opinion—Filed August 10, 1940

Before L. Hand, Circuit Judge, Cooper and Coxe, District Judges

On motion for an injunction, restraining the Commissioner of Motor Vehicles of the State of New York from suspending the "chauffeur's" license of the bankrupt.

Harry A. Allan for the plaintiff.

Jack Goodman for the defendant.

L. Hand, C. J.:

This is a motion made in an action brought to enjoin the Commissioner of Public Vehicles of New York from suspending the plaintiff's driver's license as a chauffeur. The plaintiff is a bankrupt, duly adjudicated on June 21, 1940, but his discharge has not been granted, nor does it appear that the referee has fixed any time under Sec. 12 of the Bankruptcy Act within which creditors must file their specifications of objection. The defendant has filed an answer, admitting all the essential facts upon which the suspension of a driver's license depends under Sec. 94 (a) of the Vehicle & Traffic Law of New York. These are that judgment shall be recovered against the licensee for damages for injuries to person or property, resulting from the operation of a motor-car, that he shall not pay the judgment within fifteen days, that the judgment creditor shall in writing ask the clerk of the court where the judgment is entered to forward a certified copy of it to the commissioner of public vehicles, and that the clerk shall do so. The section then directs the commissioner to suspend the driver's [fol. 13] license for three years unless he pays the judgment meanwhile, and even if he does, not to restore it within that time, or thereafter, unless he gives the security, required by Sec. 94 (c) of the act, to protect any whom he may injure in the future. The legislature added a proviso in 1936 that upon consent in writing of the creditor the commissioner might restore the license in any case for six months, and for as much longer thereafter as the creditor's

consent remains outstanding; but again only in case the debtor gives the security required by Sec. 94 (c). (Laws 1936, c. 448.) The general plan of the section is apparent. Although no compulsory insurance is made a condition upon granting them, all licenses are issued subject to two conditions: first, that after one accident in which the judgment of a court has found the licensee at fault, his license will be permanently cancelled unless he takes out insurance; and second, that in any event it will be suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration.

It would have been more regular to proceed by petition in the bankruptcy proceeding, as this "action" is strictly a "controversy" in bankruptcy, ancillary to the main proceeding; but, since the difference is only one of form, we will disregard it. We have already held in Healey v. Murnaghan, 34 Fed. Suppl. —, that we have jurisdiction under Sec. 11 to enjoin the commissioner; and that, after the clerk has remitted the judgment to him, it is necessary to call together a court of three judges under Sec. 380 of Title 28, U. S. Code. The question is therefore now inescapably presented whether the section is constitutional.

The bankrupt attacks it upon two grounds; first, that it violates the Fourteenth Amendment; and second, that by impairing the effect of a discharge it conflicts with Sec. 17 of the Bankruptcy Act. The first point presents little difficulty. There could be no possible complaint, if the [fol. 14] legislature, instead of requiring all drivers to take out insurance, had required only those to do so, who had been once found guilty of careless driving. The only question that can be raised is whether it contradicts that purpose to add the second condition; i. e. that the license will be suspended for three years unless the licensee pays the judgment. That was the form of the section before 1936, and that we shall consider first. The effect of this was to make the license security for any damage done through the licensee's carelessness, and that was well calculated to increase his care. Indeed—though long use has accustomed us to its acceptance—perhaps insurance against liability for personal fault without some attendant means of enforcing care (such as exists, for example, in the case of marine insurance) always serves somewhat to dampen caution; at least reasonable people might think so, and for that reason a legislature might forbid any insurance whatever against the first few thousand dollars of liability for negligent

driving so that drivers should have a pecuniary incentive to avoid collision. This section before 1936 had in substance such a result, and for that reason it did not conflict with the Fourteenth Amendment. So a "statutory court" held in Munz v. Harnett, 6 Fed. Suppl. 158, and there have been several other decisions elsewhere, upholding similar statutes. Watson v. State Division of Motor Vehicles, 212 Cal. 279; Opinion of the Justices, 251 Mass. 617; Garford Trucking, Inc. v. Hoffman, 114 N. J. L. 522; Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200; State v. Price, 49 Ariz. 19; Nulter v. State Road Comm., 119 W. Va. 312.

The argument that the section conflicts with Sec. 17 of the Bankruptcy Act is more plausible. It seems to us at least very doubtful whether, as was said in Munz v. Harnett, supra (6 Fed. Suppl. 158) it is here relevant that a discharge does not extinguish the debt, but merely tolls the remedy. Whether the section can be justified or not, certainly power to suspend the driver's license is in effect a means of collecting the debt; it takes away his livelihood until he pays, and its imposition lies in the creditor's hands. The fact that the section adds the sanction that the driver, [fol. 15] once found negligent, must in any event give security for the future, does not obliterate this; each condition is independent of the other. Therefore, if Sec. 17 must be read as relieving bankrupts of all sanctions for the collection of dischargeable debts, no matter what other public purpose they may serve, the section is invalid, for the Bankruptcy Act is paramount. We do not think that the section so much impedes the states in their polity. Inability to pay one's debts is not irrelevant in determining one's fitness for many kinds of activity. In In Re Hicks, 133 Fed. Rep. 739, for example, a city ordinance had provided that no one should be a municipal fireman who did not pay his debts, and the court held the ordinance invalid because it conflicted with the Bankruptcy Act. The ruling seems to us plainly wrong; the city might have good reasons for excluding from a position so vital to its welfare men who were so irresponsible that they would not live within the salaries given them. The fact that in doing so, the ordinance necessarily acted as a sanction for the collection of the debts was not material; the city was still entitled to make its own standards for admission to its fire department. The same reasoning applies here. Drivers of motor-cars are a selected class, and of these those who suffer judg-

ments for faulty driving are presumably less likely to be safe drivers than the average. Out of this number to discipline only those who cannot pay judgments against them, might rationally be a further step in the same direction, for it is not unreasonable to say that among careless drivers, those are apt to be more careless who have no financial interest at stake. It is enough if the standard chosen works well on a whole; legislation is inevitably a more or less rough process, and need aim at no more than average success.

We have hitherto considered the section as it stood in 1936 before the amendment which gave the creditor power to consent to the restoration of the license, and before he alone could set the machinery in motion. The plaintiff [fol. 16] argues that after these amendments at any rate, if not before, the section became only a remedy for the collection of debts. As to the amendment of 1936 he says that, even if it helped to insure safe driving to make the driver's license security for any judgment against him, it did not further that policy to give the creditor power to restore it; for it would be absurd to say that out of those drivers who have been found both negligent and financially irresponsible, those alone should be disciplined who could not persuade their creditors to be lenient. Yet it is doubtful whether the amendment made any very substantial change. The original statute in fact gave the creditor power at any time to restore the license by a complete satisfaction of the judgment; and the amendment merely added to this by enabling him to withdraw his consent, once given, after six months. In any case, whether that change conflicted with Sec. 17, or could be reconciled with the original scheme, we need not decide for reasons that will appear.

The commissioner defends the amendment of 1939 by saying that it was a fair implementation of the purpose of the original section, because it merely relieved the clerk of an irksome duty. He had been obliged to find out whenever a judgment had remained unpaid for fifteen days, whether it was for damages due to negligent driving. Instead of this the amendment set up an automatic system depending upon the creditor's interest in starting the clerk into action. This distinction is, however, more apparent than real because under the section as it stood before 1939, the creditor had the same incentive and he was as likely as thereafter to advise the clerk of the judgment, after which the clerk

was bound to proceed. The only change was that after 1939 the clerk could not proceed sua sponte, and that the amendment did thereafter in theory allow the creditor to hold off the suspension. But again, not only could he have done that before 1939 by a satisfaction of the judgment, but the chance that the clerk would have acted without being prodded by the creditor must have been very remote. This amendment also really made very little change in substance. [fol. 17] However, we need not pass on the constitutionality of either of the amendments, for it is well settled in New York, as elsewhere, that a statute itself constitutional, is not affected by an unconstitutional amendment; the amendment is brutum fulmen and drops out as though never passed. People ex rel. Farrington v. Mensching, 187 N. Y. 8, 22, 23; Markland v. Scully, 203 N. Y. 158, 166; People v. Klinck Packing Company, 214 N. Y. 121, 140; Buffalo Gravel Corp. v. Moore, 201 App. Div. 242, 248, affirmed on other grounds, 234 N. Y. 542. This doctrine is really no more than an instance of another doctrine, which happens to be especially favored in New York, that a statute will survive the excission of unconstitutional parts, unless it is apparent that the legislature would not have enacted it with the invalid parts out of it. New York Central & H. R. R. R. v. Williams, 199 N. Y. 108, 116; People v. Beakes Dairy Co., 222 N. Y. 416, 431, 432; People ex rel. Alpha P. C. Co. v. Knapp, 230 N. Y. 48, 60; People v. Maneuso, 255 N. Y. 463, 474; Bronx G. & E. Co. v. Maltbie, 268 N. Y. 278, 292; Gaynor V. Marohn, 268 N. Y. 417, 430. In the case at bar the clerk did remit a certified copy of the judgment to the commissioner; and it makes no difference whether he did so upon the creditor's demand, or sua sponte. The creditor has made no attempt to restore the license, and may never do so; if he does, the commissioner will have to decide whether or not to comply with his demand. As things stand, we need decide therefore only upon the act as it was in 1936, and we agree with Manz v. Hartnett, supra (6 Fed. Suppl. 158) that it was valid. The temporary injunction will be vacated, and the complaint will be dismissed.

Reitz v. Mealey.

I concur.

Alfred Coxe, D. J.

[File endorsement omitted.]

[fol. 18] In United States District Court, Northern District of New York

[Title omitted]

Dissenting Opinion—Filed August 14, 1940

Cooper, J., dissenting:

The writer cannot concur with the majority opinion for the reasons appearing herein.

Section 94(b) as it was in 1933 was held a valid exercise of the State's police power in the case of Munz vs. Hartnett, 6 Fed. Supp. 158, Decided December 20, 1933.

As the Section then read it was the duty of the Commissioner of Motor Vehicles, upon receiving a certified copy of an unsatisfied judgment, to forthwith suspend the operator's or chauffe-r's license and all the registration certificates of any person "in the event of his failure within 15 days thereafter to satisfy every judgment—for damages on account of personal injury, including death, or damages to property in excess of $100.00, resulting from the operation of a motor vehicle by him or his agent, or any other person for whose negligence he shall be liable and responsible."

The section further provided that such license and registration certificate:—

"shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied and subsisting, until said judgment or judgments are satisfied or discharged, except by a discharge in bankruptcy, to the extent of or at least five thousand dollars for an injury to one person in one accident and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident, and until the said person gives proof of his ability to respond in damages as required in section 95-c of this chapter for future accidents."

[fol. 19] The section also provided as follows:—

"It shall be the duty of the clerk of the Court, or of the Court, where it has no clerk, in which such judgment is ren-

dered, to forward immediately after the expiration of said fifteen days as aforesaid, to such Commissioner, a certified copy of such judgment or a transcript thereof."

It will thus be seen that the provisions were mandatory for the permanent suspension of the operator's or chauffe-r's license and registrations until judgments are paid to the extent prescribed in the statute and the liability insurance furnished as provided in Section 94 (c).

Suspension of license automatically followed failure within fifteen days to pay the judgment to the extent prescribed to give liability insurance against future accidents.

The negligent and defaulting driver or owner could never again have operator's or chauffe-r's license or registration certificate until he paid the judgment to the extent specified and gave the liability insurance required (by section 94-c) as proof of his ability to respond in damages fo*r* future accidents.

By 1936 the period of suspension because of non-payment of the judgment specified was reduced to three years, but the same proof of ability to respond in damages fo*r* future accidents by furnishing liability insurance was required.

In 1936 the statute was further amended to read as follows:—

"Provided, however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the Commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter."

In 1939, Section 94-b was re-enacted, including the above amendment of 1936 and by inserting in the section the words in italics in the quotation from the section.

"It shall be the duty of the clerk to forward immediately —*upon written demand of the judgment creditor or his attorney* a certified copy of such judgment or a transcript thereof."

This insertion is a direction to the Clerk to forward a copy of the judgment to the Commissioner of Motor Vehicles [fol. 20] upon written demand and not otherwise. This means that without such demand the clerk has no duty.

It is thus clear that since the 1939 re-enactment of Section 94-b, nothing happens to the judgment debtor unless the judgment creditor wills it so. Except for such action by the judgment creditor, the debtor may apparently drive for the rest of his life without paying the judgment and without obtaining any liability insurance.

On the other hand, action by the judgment creditor will prevent the judgment debtor driving for a single day unless the latter comes to terms with the creditor.

The creditor has but to make written demand on the clerk and the latter must forward "immediately" to the commissioner and the commissioner must thereupon suspend the debtor's license.

The provision inserted in the statute in 1936 and now a part thereof, that if the judgment creditor consents in writing license "may be allowed" by the Commissioner for six months and thereafter until such consent is revoked in writing, is mandatory in legal effect in the absence of any provision that license may be allowed "within the discretion of the commissioner" or "with the approval of the commissioner."

"May" must be construed as "shall" when the contest or subject matter require such construction.

Supervisors vs. U. S., 4 Wall 435.

In U. S. vs. Thoman, 156 U. S. 353, 359, it is said:—

"It is a familiar doctrine that when a statute confers a power to be exercised for the benefit of the public or of a private person, the word "may" is often treated as imposing a duty rather than conferring a discretion.

Mason vs. Pearson, 9 How. 248.
Washington vs. Pratt, 8 Wheat 681.
Supervisors vs. U. S., 4 Wall. 435."

In People Ex Rel. Doscher vs. Sisson, 222 N. Y. 387, 395, it was held:—

[fol. 21] "The authorization created by the word "may" was mandatory and not permissive. It is a general though not inflexible rule that permissive words used in the statutes conferring powers and authority upon officers or bodies will be held mandatory when the act authorized to be done concerns the public interest or the rights of individuals." (Citing cases.)

It will be seen that this section makes the Commissioner of motor vehicles a disguised collection agent for the judgment creditor. All public policy of protection for the public is eliminated. No longer must the non paying judgment debtor inescapably lose permanently, or for three years, his right to operate a motor vehicle, unless he pays the judgment to the extent defined in the section.

He now has the privilege to operate the motor vehicle without compliance with the statute as it was, but that privilege is within the sole control of the judgment creditor. He must bargain with the creditor for installment payments or other consideration satisfactory to the creditor.

If terms are not made, the judgment creditor makes written demand on the clerk of the Court and the latter is required to forward immediately to the Commissioner a certified copy of the judgment. The Commissioner must thereupon suspend the judgment debtor's license. Immediately upon the lat-er coming to terms with the judgment debtor, the judgment creditor by written consent requires the commissioner to revoke the suspension for six months. At the end of six months, if terms are not complied with, suspension again ensues. If terms are complied with no suspension takes place at all. This consent to operate may cover the whole three years period.

No public officer has any power to deny the judgment creditor's will, whoever that creditor may be. The statute makes it the duty of the Clerk of the Court and the Commissioner to carry out the judgment creditors will in suspending or not suspending the license. That the Clerk and the Commissioner will be compelled by mandamus to act as the judgment creditor demands is without doubt.

Jones vs. Harnett, 247 A Div. 7, Affirmed 271 N. Y. 626.

[fol. 22] It is quite true that the judgment debtor need not accept the demand which the judgment creditor may make as a condition of raising the three year ban, but accept he must or lose the right or privilege of operating an automobile on the public highway. If his occupation is that of driving an automobile or truck, as here, this means that his livelihood is in the sole control of the judgment creditor.

Under this statute all pretense of the exercise of the police power of the State for the protection of the public using the

highways by suspending the license for three years must be deemed to be abandoned.

The ultimate power of suspension is exclusively vested in the discretion of a private citizen.

Moreover, the private citizen may at some time be not a citizen at all but the worst felon out of prison, for his right to sue is not lost except in case of life imprisonment (Section 511 N. Y. Penal Law).

Statutes are to be construed by what is possible under them.

> People vs. Klinck Packing Company, 214 N. Y. 121, 139.

This statute is unique in delegating its enforcement to unknown private citizens in their discretion and for their own interest, and no case passong a like statute has been found. But authorities have been found analogous in principle.

An act attempting to delegate legislative power even to a public officer to be exercised in his discretion is invalid.

> People vs. Klinck Packing Company, 214 N. Y. 121, 138 Supra.

How much more invalid is the attempt to delegate such power to unknown and unknowable private citizens to be exercised in their discretion.

It is held in substance that the state police power can neither be abdicated nor bargained away and is inalienable even by express grant.

> Atlantic Coast Line Ry. vs. Goldsboro, 232 U. S. 548, 558.

The State may not surrender or bind itself not to exert its police power.

> Phillips Petroleum Company vs. Jenkins, 297 U. S. 629, 635, also
> [fol. 23] Chicago and A. R. R. Company vs. Traubarger, 238 U. S. 67, 77.

In Coppage vs. Kansas, 236 U. S. 1, it was held in substance that a statutory provision which is not a legitimate police regulation cannot be made such by being placed in

the same act with a police regulation or by being enacted under a title that declares a purpose which would be a proper object for the exercise of that power.

In Henning vs. Georgia, 163 U. S. 299, 304, it was held that where a state statute purporting to be enacted under the police power of the state has no real or substantial relation to the object sought, or is a palpable invasion of the rights secured by fundamental law, it is invalid.

In Gulf C. S. St. R. Railways vs. Ellis, 165 U. S. 150, it was decided that a statute which is merely to compel the payment of an indebtedness does not come within the scope of the police power.

It seems reasonably clear, therefore, that Section 94 b is not a valid exercise of the police power of the State.

By itself, the question of whether or not Section 94 b is a valid exercise of State Police Power might not present a Federal question and could not, therefore, be decided here if it were the sole question for decision. But where a federal question is presented, the Court has jurisdiction to decide the state questions.

In Greene vs. Louisville & I. Railway Company, 244 U. S. 899, the headnote says:—

"In cases in which the jurisdiction of the District Court is properly invoked upon a substantial controversy arising under the Constitution of the United States, the jurisdiction of that Court and of this Court on Appeal, extends to the determination of all questions involved, including questions of State Law, irrespective of the disposition that may be found of the Federal question and of whether it be found necessary to decide it at all."

See also Chi G. W. R. vs. Kendall, 266 U. S. 94.
L. & N. Railway vs. Garrett, 231 U. S. 298.

The Federal question here is whether or not section 94 b violates any provision of the Federal Constitution or of laws enacted under power delegated exclusively to the Federal Government.

The decision here might rest upon the invalidity of Sec- [fol. 24] tion 94-b as an exercise of State police power.

But the section also invades the field of bankruptcy delegated by the U. S. Constitution to the Federal sovereignty.

It is a transparent attempt by the State to provide a means by which the private citizen may, in violation of the

bankruptcy laws of the United States, collect his judgment in whole or in part from one and an unknown class of persons, viz, those licensed to operate a motor vehicle on those highways against whom a negligence judgment arising from the operation of such motor vehicle has been recovered and remains unpaid, which judgment is discharged under the bankruptcy laws or will be discharged.

The Statute expressly says that the license when suspended at the judgment creditors discretion:—

"shall remain so suspended—while any such judgment or judgments remain unstayed, unsatisfied and subsisting either until said judgment or judgments are satisfied or discharged *except by discharge in bankruptcy* to the extent * * *." etc.

In other words, it is an attempt on the part of the one state to withdraw from the Federal Government, for the benefit of a limited class of persons, a portion of the bankruptcy power delegated by the States to the Federal Government in the Constitution and thereby destroy the uniformity of the bankruptcy laws, so far as the State of New York is concerned. One of the functions of that Federal Power under the Constitution is to declare what judgments are dischargeable and to provide for their discharge.

When the bankrupt is discharged from his debts under the Federal Bankruptcy Law, no state has power to make any sanctions or procedure by which a discharged judgment may nevertheless be collected under whatever guise that sanction or procedure may be dressed.

When a state by statute, not a valid exercise of police power, attempts to do so, its statute invades the Federal field of bankruptcy, and is in conflict with the Federal Constitutional power.

[fol. 25] In Gilbett's Collier on Bankruptcy, (4th Ed.) at Page 2 it is said:—

"The bankruptcy act having been adopted by Congress under the Constitutional delegation of power is the supreme law of the land and its provisions are paramount to any state statute."

Numerous authorities might be cited:—The following suffices.

Local Loan Company vs. Hunt, 292 U. S. 234, 244, 245.

That the discharge of bankrupts from dischargeable debts is a matter of public interest was declared in Hanover National Bank vs. Moyses, 186 U. S. 181, where the Court said at Page 192:

"The determination of the status of the honest and unfortunate debtor by his liberation from encumbrance on future exertion is a matter of public concern and Congress has power to accomplish it throughout the U. S. by proceedings at the debtor's domicil."

To the same effect are: Williams vs. U. S. Fidelity & Guaranty Company, 236 U. S. 549, 555-555.

Local Loan Company vs. Hunt, 292 U. S. 234, 244 Supra.

Courts are not to be influenced by the hardship which some innocent person may suffer because judgments recovered against negligent operators of automobiles are dischargeable in bankruptcy and there, therefore, uncollectible.

The remedy lies with Congress which can make such judgments non dischargeable, not with the Courts or the State Legislature.

It is said in the majority opinion that the provisions placed in Section 94-b in 1936 empowering the judgment creditor to require the Commissioner to give permission for the debtor to operate his automobile for six months and thereafter until the creditor withdraws the permission, and the 1939 insertion which together with the 1936 provision gives the creditors sole power to start or not start the suspension proceedings, may be entirely stricken out of the statute by decision of this Court and still leave the remainder of the section valid and constitutional.

The majority opinion does not say that these 1936 and 1939 provisions are unconstitutional but holds such decision [fol. 26] not necessary because they may be stricken out and leave a valid and constitutional remainder of the section.

The writer cannot concur in this view.

It is, of course, well recognized, that if some part or parts of a statutory scheme or regulation is or are unconstitutional and readily separable and the general scheme and regulation as intended by the Legislature remains unimpaired, such part or parts may be stricken out and the remainder of the statute held valid.

Such is the effect of the authorities cited in the majority opinion.

Reference to one will illustrate this.

People Ex Rel Alpha P. Company vs. Knapp, 230 N. Y. 48 was concerned with a revenue act.

The Court there found a condemned part easily separable and said at Page 62:—

"Thus viewing it, I cannot doubt that the exclusion of interest on intangibles will leave the *essence of the scheme intact.*"

The other cases are generally of like nature.

The teaching of these cases is that only where the general scheme and intent of the statute is not impaired, separable parts not constitutional may be stricken out and the remaining held valid.

These cases are not controlling here because here we do not have any such statute as those there involved and because here, after the elimination of the condemned parts, the essence of the statutory scheme does not remain intact.

In statutory construction it is the duty of the Courts to find and give effect to the legislative intent.

Matter of Hering, 196 N. Y. 218, 221.

Osborne vs. Int. Ry. 226 N. Y. 421, 425.

People Ex. Rel. Babcock vs. Law, 209 App. Div. 526.

Courts will assume that legislatures in passing an amendment to a statute intended to effect such material change as is indicated by the amendment, otherwise the legislation would be nugatory.

[fol. 27] People Ex. Rel. Sheldon vs. Board of Appeals, 234 N. Y. 484.

This section 94-b is not a complicated taxing act as in some of the cases referred to in the majority opinion, nor a complex regulatory act as in Buffalo Gravel Company vs. Moore, 201 App. Div. 242. This act is an integral and indivisible unity. It is but one thing. It has but one object, viz, a statutory scheme by which the negligence judgment creditor may collect his judgment, which scheme places all power of starting, stopping, and restarting the statutory machine under exclusive control of the creditor and provides that the Court Clerk and Commissioner can act only as he commands, all of which is but a statutory scheme by which the negligence creditor may collect a debt dischargeable in bankruptcy.

That the legislature meant it so "also admits of no doubt for in 1936 and 1939 it made the changes (including re-enactment in 1939) deliberately and intentionally changing to

such an act as above outlined, from an act providing for mandatory automatic suspension of a defaulting judgment debtors license forever (later changed to three years) over which suspension the judgment creditor had not one iota of power or control.

When the part of the statute found unconstitutional is so connected with the general scope and purpose of the legislation that its imperfections destroy the latter, it cannot be eliminated and the statute as a whole must fall.

People vs. Klinck Packing Company, 214 N. Y. 121, 140 Supra.

Where the invalid is so commingled with the valid, is so large and essential a part of the general scheme that Revision is impossible; the statute as a whole is invalid.

Meyer vs. Wells Fargo Express Company, 223 U. S. 298, cited with approval in People Ex. Rel. Alpha P. Company vs. Kanpp, 230 N. Y. 48, 60 Supra; Ives vs. South Buffalo Railway Company, 201 N. Y. 271, 317.

An interesting discussion of the difficulties of attempting to separate condemned parts in a statute devoted to a limited [fol. 28] object is contained in the dissenting opinion of Judges Kellogg & O'Brien in People vs. Mancuso, 255 N. Y. 463, 487, where the dissenting Judges held:—

"Nevertheless, the two parts, valid and invalid, must be 'capable of separation,' (Supervisors vs. Stanley, Supra, Page 312), the valid part will be retained only "provided the allowed and prohibited parts are severable." (Packet Company vs. Keokuk, 95 U. S. 80, 89); it will be retained only if the unconstitutional part is clearly "separable." (Berea College vs. Kentucky supra; Huntington vs. Worthen supra). In all the cases cited, and in many more, where a constitutional provision has been "separated" and saved, although contained in the same clause with an unconstitutional provision, the statutes considered have been of wide application, comprehending as the subjects of a tax, a prohibition, or a regulation, non-taxable properties or matter incapable of prohibition, or regulation by the enacting statute as well as properties or matters properly the subject of its enacting powers. The provisions allowed to remain have by their terms covered permissible subjects; subjects forbidden by reason of the constitution,—have merely been released from the statutory coverage."

If the condemned parts are stricken out of Section 94-b, it does not leave the "essence of the scheme intact," as in People ex. rel. Alpha P. Company vs. Knapp, 230 N. Y. 48 Supra. On the contrary it completely destroys the intended statutory scheme.

What is left of the Section is not the statutory scheme now embodied in the statute, but it is the scheme of the statute as it was before 1936. This scheme the majority of the Court approve and hold may be saved and made effective as a laudable statute.

But if this is done, gone are all such rules of construction as that it is the duty of the Courts to find and give effect to the legislative intent, which is here so manifest; that when the legislature amends a statute it intends to make such material change as is indicated by the statute, that a statute will not survive the excission of unconstitutional parts if it is apparent that the legislature would not have enacted it with the invalid parts out of it; that courts can only separate and strike out parts of a statute as unconstitutional and hold the remainder of the statute valid if that remainder embodies and preserves the essence of the general scheme and purpose of the statute.

[fol. 29] How then can it reasonably be said here that the condemned parts are separable and that what remains embodies the "essence of the scheme intact?"

In short, the statute is one thing as it stands. To strike out the condemned parts is to change the statute to something quite different.

For the Court to strike out the condemned parts and thereby change the statute into something not intended or contemplated by the legislature in 1936 and 1939 borders on judicial legislation. It is an invasion by the judicial power of the governmeatal field reserved for the legislature power.

It is in effect saying to the State Legislature that it cannot have the statute that it deliberately created by amendment in 1936 and by re-enactment in 1939 with further change, but it can have and must have a statute which the Court approves as a salutary statute but which the legislature deliberately discarded and abandoned in 1936 and 1939.

It matters not that when the legislature next meets it has power to repeal the court-approved statute and enact such statute as it pleases. It is no less an invasion during the interim.

This is not a state Court passing in a state statute challenged as violating the state constitution.

This is a Federal Court invoked to determine whether or not a state statute violates the Federal constitution.

The writer cannot concur in the majority opinion and holds that the statute is a unity and inseparable, is unconstitutional and void and its enforcement should be restrained.

August 13, 1940.

[File endorsement omitted.]

In United States District Court, Northern District of New York

George C. Reitz, Plaintiff,

against

Carroll E. Mealey, as Commissioner of Motor Vehicles of the State of New York, Defendant

Judgment—Filed October 26, 1940

This case came on to be heard on the 3rd day of July, 1940 before Honorable Frank Cooper, District Judge, and Honorable Learned Hand, Circuit Judge, and Honorable Alfred C. Coxe, District Judge, whom he called to his assistance pursuant to Section 380 of the United States Code of Laws, and the pleadings having raised no issue on any of the material facts alleged in the complaint herein, and the sole issue involved being the constitutionality of Section 94-b of the Vehicle and Traffic Law of the State of New York, it was stipulated by counsel that the hearing be treated as the final hearing in this suit on the prayer for a permanent injunction and that a final decree might be issued granting or denying a permanent injunction herein, and, thereupon, upon consideration thereof it was

Ordered, Adjudged and Decreed, that the bill of complaint of the plaintiff be and the same hereby is dismissed upon the merits.

Dated: October 7th, 1940.

Learned Hand, Circuit Judge; Frank Cooper, District Judge; Alfred C. Coxe, District Judge.

[File endorsement omitted.]

[fol. 31] In Supreme Court of the United States

[Title omitted]

Petition for Appeal—Filed December 5, 1940

To Hon. Frank Cooper, United States District Court Judge for the Northern District of New York:

Your petitioner, George C. Reitz, respectfully shows:

First. That your petitioner is the appellant in the above entitled proceeding and is a resident of the County of Albany and State of New York, which is located in the Northern District of New York.

Second. That this action was commenced on July 14, 1940, by service of the summons and complaint herein upon the Attorney General, with due notice to all other parties necessary to the proceeding.

Third. That on June 21, 1940, the appellant herein was duly adjudicated a bankrupt and the question of his discharge has not yet been determined, said question being held pending the determination of this action.

Fourth. That scheduled among the debts of the appellant herein in the bankruptcy proceeding, under Schedule A 3, is a judgment recovered against the appellant herein in the Supreme Court, Albany County, in favor of one Anson Shafer, in the sum of Five Thousand One Hundred Thirty Eight Dollars and Twenty-Five Cents ($5138.25), arising out of a negligence action to recover damages for personal injuries due to the operation of an automobile by the appellant herein.

Fifth. That said judgment was duly docketed in the Albany County Clerk's Office on December 15, 1939, and notice [fol. 32] of entry thereof was served upon the attorney for the appellant herein and said judgment still remains unsatisfied.

Sixth. That the claim of the judgment creditor, Anson Shafer, and the judgment obtained pursuant to said claim are dischargeable in bankruptcy.

Seventh. That prior to May 29, 1940, pursuant to demand by John J. Scully, attorney for said judgment creditor un-

der the provisions of Sec. 94b, of the Vehicle & Traffic Law of the State of New York, the Clerk of the Supreme Court, Albany County, forwarded a transcript of said judgment to the Commissioner of Motor Vehicles of the State of New York, Carroll E. Mealey, the appellee herein, with evidence to the effect that said judgment had remained unsatisfied for more than fifteen (15) days after the same had become final, all in due compliance with Sec. 94b. of the Vehicle & Traffic Law of the State of New York; that by authority of Sec. 94b. of the Vehicle & Traffic Law of the State of New York the appellee issued an order suspending appellant's chauffeur's license until the judgment hereinbefore mentioned is satisfied.

Eighth. That said Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional and void as it is in violation of the Constitution of the United States and invades the field of bankruptcy, which, by the United States Constitution, is a power exclusively delegated to the Federal Government, in that said section, solely at the instigation of the judgment creditor and not otherwise, mandatorily requires the Commissioner of Motor Vehicles of the State of New York to suspend appellant's chauffeur's license for a term of three (3) years but places within the exclusive control of said judgment creditor the right to consent to the restoration of said license immediately and from time to [fol. 33] time, and that said section in effect is a means given to the judgment creditor to collect a judgment dischargeable in bankruptcy and removes said judgment from the class of dischargeable debts, in violation of the Fourteenth Amendment to the Constitution of the United States.

Ninth. That irreparable damage will be done to the appellant herein if such order of suspension is allowed to remain in full force and effect.

Tenth. That the appellant herein has not yet surrendered his chauffeur license to the Commissioner of Motor Vehicles pursuant to said order of suspension due to the fact that all proceedings on the part of the Commissioner of Motor Vehicles to enforce the suspension of appellant's chauffeur's license have been enjoined pending the disposition of this action.

Eleventh. That by judgment of a Statutory District Court of Three Judges, to wit., Hon. Learned Hand, Circuit Judge,

Hon. Frank Cooper, District Judge, and Hon. Alfred C. Coxe, District Judge, dated October 7, 1940, and entered in the office of the Clerk of the United States District Court for the Northern District of New York on October 26, 1940, a copy of which was served upon the attorney for the appellant herein on November 2, 1940, the bill of complaint of the appellant herein was dismissed upon the merits.

Twelfth. That the appellant herein is desirous of appealing to the Supreme Court of the United States, pursuant to the provisions of Sec. 266 of the Judicial Code as amended (U. S. Code, Title 28, Sec. 380), which permits a direct appeal from the Statutory District Court of Three Judges to the Supreme Court of the United States in any case where the constitutionality of a state statute is presented.

Thirteenth. That it is claimed by the appellant herein that Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional and void in so far as the pro- [fol. 34] visions of said section operate upon the rights of the appellant herein, a bankrupt.

Fourteenth. That the appellant herein respectfully requests a stay of all proceedings herein, pursuant to the provisions of Sec. 266 of the Judicial Code supra, pending this appeal, upon the ground that irreparable damage will be done to the appellant herein if the appellee is permitted to enforce the provisions of Sec. 94b. of the Vehicle & Traffic Law against the appellant herein before the determination of this appeal by the Supreme Court of the United States.

Fifteenth. That the Attorney General of the State of New York has consented to dispense with the bond to secure the appellee for costs of this appeal.

Sixteenth. That in accordance with the provisions of Secs. 238 and 266 of the Judicial Code, and in accordance with the Rules of the Supreme Court of the United States, the appellant herein respectfully shows the Court that this case is one in which, under the laws in force when the acts of February 13, 1925, were passed, to wit., Secs. 238 and 266 of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

Seventeenth. That the errors upon which the appellant herein claims to be entitled to an appeal are more fully set forth in the assignment of errors filed herein pursuant to

Rules 9 and 46 of the Rules of the Supreme Court of the United States, and there is likewise filed herewith a statement as to the jurisdiction of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

[fol. 35] Wherefore, your petitioner prays for the allowance of the appeal from the judgment of the said Statutory District Court of Three Judges to the Supreme Court of the United States in order that the decision and final judgment of said Court may be examined, reviewed and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the United States District Court for the Northern District of New York, under the hand and seal of said Court, may be sent to the Supreme Court of the United States, as provided by law; that a stay may be granted restraining the Comsioner of Motor Vehicles of the State of New York from any and all further acts in any way tending to affect the chauffer's license of the appellant herein; and that security for costs to the appellee herein be dispensed with; and that the appellant herein have such other and further relief as to this Court may seem just and proper in the premises.

George C. Reitz, Petitioner.

Duly sworn to by George C. Reitz. Jurat omitted in printing.

[fol. 36] In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal and Waiving Cost Bond—Dec. 3, 1940

The petition of George C. Reitz, the appellant in the above entitled cause, for an appeal to the Supreme Court of the United States from the final judgment entered in the office of the Clerk of the United States District Court for the Northern District of New York on October 26, 1940, and duly served upon the appellant herein by service upon his attorney, Harry A. Allan, on November 2, 1940, having been presented herein accompanied by an assignment of errors,

and a statement as to jurisdiction, as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record and all previous proceedings in this case having been considered, it is hereby

Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the final judgment entered in the office of the Clerk of the United States District Court for the Northern District of New York, which judgment was granted by a Statutory District Court of Three Judges, to wit., Hon. Learned Hand, Circuit Judge, Hon. Frank Cooper, District Judge, and Hon. Alfred C. Coxe, District Judge, on October 7, 1940, as prayed in the petition of the appellant, and that the Clerk of this Court shall make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, in accordance [fol. 37] with Rule 10 of the Rules of the Supreme Court of the United States; and it is further

Ordered upon stipulation that security for costs of the appeal herein be, and the same hereby is dispensed with.

Dated: December 3rd, 1940.

Frank Cooper, Judge of the U. S. District Court, Northern District of New York.

[fol. 38] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed Dec. 5, 1940

The petitioner assigns the following errors in the record and proceedings in this cause:

1. The Federal Statutory District Court of Three Judges erred in refusing to sustain appellant's contention that Sec. 94b. of the Vehicle & Traffic Law of the State of New York violates

(1) The due process clause of the Constitution of the United States.

(2) The bankruptcy clause of the Constitution of the United States (Art. 1, Sec. 8, Clause 4); and

(3) Denies to the appellant the equal protection of the laws both of the United States and of the State of New York, and Sec. 17 of the Bankruptcy Act.

Wherefore, on account of the errors hereinbefore assigned, petitioner prays that said judgment, order and decree of the Federal Statutory District Court of Three Judges, to wit., Hon. Learned Hand, Circuit Judge, Hon. Frank Cooper, District Judge, and Hon. Alfred C. Coxe, District Judge, entered in the office of the Clerk of the United States District Court for the Northern District of New York, be reversed, and judgment entered in favor of the appellant.

Dated: November 27, 1940.

George C. Reitz, Petitioner. Harry A. Allan, Attorney for Appellant.

[fol. 39] Citation in usual form filed Dec. 5, 1940, omitted in printing.

[fol. 40] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 41] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY—Filed January 27, 1941

Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional upon the grounds that said statute

1. Conflicts with the bankruptcy clause of the United States Constitution (Art. 1, Sec. 8, Clause 4) and Sec. 17 of the Bankruptcy Act.

2. Violates the due process clause of the United States Constitution (14th Amendment).

3. Denies to appellant the equal protection of the Laws of the United States, in violation of the 14th Amendment to the United States Constitution.

The federal statute which appellant claims he is protected by and which is violated by Sec. 94b. of the Vehicle & Traffic Law of the State of New York is the Bankruptcy Act, Sec. 17, in that appellant is deprived by Sec. 94b. of the Vehicle & Traffic Law of the State of New York of the full benefit of a discharge in bankruptcy, to which he is entitled under the Constitution of the United States and the Bankruptcy Act.

Harry A. Allan, Attorney for Appellant, Office & Post Office Address, 90 State Street, Albany, N. Y.

[fol. 42] [File endorsement omitted.]

Endorsed on cover: File No. 45,035. N. New York, D. C. U. S. Term No. 686, George C. Reitz, Appellant, vs. Carroll E. Mealey, as Commissioner of Motor Vehicles of the State of New York. Filed January 8, 1941. Term No. 686 O. T. 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

Appellant,

vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION.

HARRY A. ALLAN,
DANIEL H. PRIOR,
Counsel for Appellant.

INDEX.

Subject Index.

Table of Cases Cited.

Statutes Cited.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

Appellant,

vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK.

Appellee.

STATEMENT AS TO JURISDICTION.

The appellant in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

A.

Statutory Provisions Sustaining Jurisdiction.

The statutory provisions relied upon by the appellant to sustain the jurisdiction of the Supreme Court of the United States to review the judgment of the Statutory District Court of Three Judges, entered in the office of the Clerk of the United States District Court for the Northern District of New York, are Secs. 238 and 266 of the Judicial Code,

as amended (U. S. Code, Title 28, Secs. 345 and 380), permitting a direct appeal from the Federal Statutory District Court of Three Judges to the Supreme Court of the United States from the decision, order or judgment of said court granting or denying an injunction based upon the alleged unconstitutionality of a State statute.

B.

State Statute Involved.

New York State Vehicle & Traffic Law, Sec. 94b. (New York Laws of 1929, Chap. 695, as last amended by Laws of 1939, Chap. 618).

> "*Sec. 94-b. Failure to satisfy judgments; revocation of licenses and security.*
>
> The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure within fifteen days thereafter to satisfy every judgment in excess of one hundred dollars which shall have become final by expiration without appeal, of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in this state, or in any other state or the District of Columbia, or of any district court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damages to property, resulting from the ownership, maintenance, use or operation of a motor vehicle by him, his agent, or any other person for whose negligence he shall be liable and responsible, shall be forthwith suspended by the commissioner of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered, showing such judgment or judgments to have been still unsatisfied after the expiration of fifteen days after the same became final as aforesaid, and, except as otherwise pro-

vided in this chapter, shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied or discharged, except by a discharge in bankruptcy, to the extent of at least five thousand dollars for an injury to one person in one accident, and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident or three years shall have elapsed since such suspension, and until the said person gives proof of his ability to respond in damages, as required in section ninety-four-o of this chapter for future accidents. Provided, however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter. It shall be the duty of the clerk of the court, or of the court, where it has no clerk, in which any such judgment is rendered, to forward immediately, upon written demand of the judgment creditor or his attorney, after the expiration of said fifteen days as aforesaid, to such commissioner a certified copy of such judgment or a transcript thereof. In the event the defendant is a non-resident it shall be the duty of the commissioner to transmit to the commissioner of motor vehicles or other officer or officers having in charge the licensing of chauffeurs and operators and the registration of motor vehicles of the state or of any province of Canada of which the defendant is a resident, a certified copy or copies of the said judgment. If after such proof has been given, any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, such license and certificates shall again be and remain suspended and no other such license or certificate shall be issued

to such person while any such judgment remains unsatisfied and subsisting, provided, however, that

(1) when five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident, or

(2) when subject to the limit of five thousand dollars for each person, the sum of ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of more than one person as the result of any one accident, or

(3) when one thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle by such judgment debtor, his agent or by any other person for whose negligence the owner shall be liable and responsible, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purpose of this section only.

If any such motor vehicle owner or operator shall not be a resident of this state, the privilege of operating any motor vehicle in this state and the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn, while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than fifteen days, as aforesaid and shall not be renewed, nor shall any operator's or chauffeur's license be issued to him nor any motor vehicle registered in his name until either every such judgment shall be stayed, satisfied or discharged as herein provided or three years shall have elapsed since such withdrawal, and until such person shall have given proof of his ability to respond in damages for future accidents, as required in the next section. This section shall not apply to any judgment where the cause of action arose prior to September first, nineteen hundred and twenty-nine.

No license or registration certificate shall be suspended pursuant to this section if, at the time the cause of action resulting in the judgment arose, the vehicle whose maintenance, use or operation caused the damage was covered by a surety bond or an insurance policy issued pursuant to section seventeen of this chapter or by an insurance policy, issued by a company authorized to do business in this state, insuring the owner and operator thereof against loss from the liability imposed by law for injury to persons or property to the amount of five thousand dollars on account of bodily injury to or death of any one person, to the amount of ten thousand dollars on account of bodily injury to or death of more than one person caused by any one accident and to the amount of one thousand dollars for damage to property and no license shall be suspended pursuant to this section if the holder thereof, at the time the cause of action resulting in the judgment arose, was insured under a motor vehicle liability policy as defined in this article, and these provisions shall be both prospective and retrospective."

C.

Date of Judgment and Date of Application for Appeal.

The final judgment of the Federal Statutory District Court of Three Judges was entered in the office of the Clerk of the United States District Court for the Northern District of New York at Utica, New York, on October 26, 1940, and notice of entry thereof was served upon the appellant herein on November 2, 1940.

D.

Nature of the Case and the Rulings Below.

This action was commenced by an order to show cause directed to and served upon the appellee herein, requiring the said appellee to show cause why all proceedings on the part of the appellee to suspend the chauffeur's license to operate an automobile of the appellant pursuant to Sec.

94b. of the Vehicle & Traffic Law of the State of New York should not be restrained on the ground that in so far as the appellant, a bankrupt, was concerned, the actions of the appellee pursuant to Sec. 94b. of the Vehicle & Traffic Law of the State of New York were unconstitutional and void. By stipulation with the Attorney General of the State of New York an action for an injunction was commenced by the bankrupt. Answer thereto was duly made by the Attorney General, acting on behalf of the appellee and all interested parties defendant.

After a hearing before the Statutory District Court of Three Judges, the bill of complaint of the plaintiff was dismissed, the Court holding by a two to one decision, Cooper J. dissenting, that Sec. 94b. of the Vehicle & Traffic Law of the State of New York was constitutional.

It was claimed in said action and is still claimed by the appellant that Sec. 94b. of the Vehicle & Traffic Law of the State of New York is unconstitutional in so far as its provisions affect the rights of the appellant, a bankrupt; that said section is in violation of the Constitution of the United States, Art. 1, Sec. 8, Clause 4, and invades the field of bankruptcy, which, by the United States Constitution is a power exclusively delegated to Congress. It was and still is further claimed that the said section denies to the appellant equal protection both of the laws of the State of New York and of the United States and violates the Fourteenth Amendment to the Constitution of the United States by depriving the appellant of his property without due process of law.

The cases relied upon by appellant to sustain the jurisdiction of the Supreme Court of the United States are:

Eichkolz v. *Pub. Serv. Comm.*, 306 U. S. 268;
In *Re Buder*, 271 U. S. 461;
Louisville etc. R. Co. v. Garrett, 231 U. S. 298;
Towne v. *Eisner*, 245 U. S. 418.

It is respectfully submitted for the above reasons that the Supreme Court of the United States has jurisdiction of this appeal, pursuant to Secs. 238 and 266 of the United States Judicial Code (U. S. Code, Title 28, Secs. 345 and 380).

Respectfully submitted,

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Office and Post Office Address,
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EXHIBIT "A".

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK.

GEORGE C. REITZ, *Plaintiff*,

against

CARROLL E. MEALEY, Commissioner, *Defendant*.

Before:

L. Hand, Circuit Judge, Cooper and Coxe, District Judges.

On motion for an injunction, restraining the Commissioner of Motor Vehicles of the State of New York from suspending the "chauffeur's" license of the bankrupt.

Harry A. Allan for the plaintiff.

Jack Goodman for the defendant.

L. HAND, C. J.: This is a motion made in an action brought to enjoin the Commissioner of Public Vehicles of New York from suspending the plaintiff's driver's license as a chauffeur. The plaintiff is a bankrupt, duly adjudicated on June 21, 1940, but his discharge has not been granted, nor does it appear that the referee has fixed any time under Sec. 12 of the Bankruptcy Act within which creditors must file their specifications of objection. The defendant has filed an answer, admitting all the essential facts upon which the suspension of a driver's license depends under Sec. 94 (a) of the Vehicle & Traffic Law of New York. These are that judgment shall be recovered against the licensee for damages for injuries to person or property, resulting from the operation of a motorcar, that he shall not pay the judgment within fifteen days, that the judgment creditor shall in writing ask the clerk of the court where the judgment is entered to forward a certified copy of it to the commissioner of public vehicles, and that the clerk shall do so. The section then directs the commissioner to suspend the driver's license for three years unless he

pays the judgment meanwhile, and even if he does, not to restore it within that time, or thereafter, unless he gives the security, required by Sec. 94 (c) of the act, to protect any whom he may injure in the future. The legislature added a proviso in 1936 that upon consent in writing of the creditor the commissioner might restore the license in any case for six months, and for as much longer thereafter as the creditor's consent remains outstanding; but again only in case the debtor gives the security required by Sec. 94 (c). (Laws 1936, c. 448). The general plan of the section is apparent. Although no compulsory insurance is made a condition upon granting them, all licenses are issued subject to two conditions: first, that after one accident in which the judgment of a court has found the licensee at fault, his license will be permanently cancelled unless he takes out insurance; and second, that in any event it will be suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration.

It would have been more regular to proceed by petition in the bankruptcy proceeding, as this "action" is strictly a "controversy" in bankruptcy, ancillary to the main proceeding; but, since the difference is only one of form, we will disregard it. We have already held in *Healey* v. *Murnaghan*, 34 Fed. Suppl. —, that we have jurisdiction under Sec. 11 to enjoin the commissioner; and that, after the clerk has remitted the judgment to him, it is necessary to call together a court of three judges under Sec. 380 of Title 28, U. S. Code The question is therefore now inescapably presented whether the section is constitutional.

The bankrupt attacks it upon two grounds; first, that it violates the Fourteenth Amendment; and second, that by impairing the effect of a discharge it conflicts with Sec. 17 of the Bankruptcy Act. The first point presents little difficulty. There could be no possible complaint, if the legislature, instead of requiring all drivers to take out insurance, had required only those to do so, who had been once found guilty of careless driving. The only question that can be raised is whether it contradicts that purpose to add the second condition; i. e. that the license will be suspended for three years unless the licensee pays the judgment. That

was the form of the section before 1936, and that we shall consider first. The effect of this was to make the license security for any damage done through the licensee's carelessness, and that was well calculated to increase his care. Indeed—though long use has accustomed us to its acceptance—perhaps insurance against liability for personal fault without some attendant means of enforcing care (such as exists, for example, in the case of marine insurance) always serves somewhat to dampen caution; at least reasonable people might think so, and for that reason a legislature might forbid any insurance whatever against the first few thousand dollars of liability for negligent driving so that drivers should have a pecuniary incentive to avoid collision. This section before 1936 had in substance such a result, and for that reason it did not conflict with the Fourteenth Amendment. So a "statutory court" held in *Munz* v. *Harnett*, 6 Fed. Suppl. 158, and there have been several other decisions elsewhere, upholding similar statutes. *Watson* v. *State Division of Motor Vehicles*, 212 Cal. 279; *Opinion of the Justices*, 251 Mass. 617; *Garford Trucking, Inc.* v. *Hoffman*, 114 N. J. L. 522; *Sheehan* v. *Division of Motor Vehicles*, 140 Cal. App. 206; *State* v. *Price*, 49 Ariz. 19; *Vulter* v. *State Road Comm.*, 119 W. Va. 312

The argument that the section conflicts with Section 17 of the Bankruptcy Act is more plausible. It seems to us at least very doubtful whether, as was said in *Munz* v. *Harnett*, *supra*, (6 Fed. Suppl. 158) it is here relevant that a discharge does not extinguish the debt, but merely tolls the remedy. Whether the section can be justified or not, certainly power to suspend the driver's license is in effect a means of collecting the debt; it takes away his livelihood until he pays, and its imposition lies in the creditor's hands. The fact that the section adds the sanction that the driver, once found negligent, must in any event give security for the future, does not obliterate this; each condition is independent of the other. Therefore, if Sec. 17 must be read as relieving bankrupts of all sanctions for the collection of dischargeable debts, no matter what other public purpose they may serve, the section is invalid, for the Bankruptcy Act is paramount. We do not think that the section so

much impedes the states in their polity. Inability to pay one's debts is not irrelevant in determining one's fitness for many kinds of activity. In *In Re Hicks*, 133 Fed. 739, for example, a city ordinance had provided that no one should be a municipal fireman who did not pay his debts, and the court held the ordinance invalid because it conflicted with the Bankruptcy Act. The ruling seems to us plainly wrong; the city might have good reasons for excluding from a position so vital to its welfare men who were so irresponsible that they would not live within the salaries given them. The fact that in doing so, the ordinance necessarily acted as a sanction for the collection of the debts was not material; the city was still entitled to make its own standards for admission to its fire department. The same reasoning applies here. Drivers of motorcars are a selected class, and of these those who suffer judgments for faulty driving are presumably less likely to be safe drivers than the average. Out of this number to discipline only those who cannot pay judgments against them, might rationally be a further step in the same direction, for it is not unreasonable to say that among careless drivers, those are apt to be more careless who have no financial interest at stake. It is enough if the standard chosen works well on a whole; legislation is inevitably a more or less rough process, and need aim at no more than average success.

We have hitherto considered the section as it stood in 1936 before the amendment which gave the creditor power to consent to the restoration of the license, and before he alone could set the machinery in motion. The plaintiff argues that after these amendments at any rate, if not before, the section became only a remedy for the collection of debts. As to the amendment of 1936 he says that, even if it helped to insure safe driving to make the driver's license security for any judgment against him, it did not further that policy to give the creditor power to restore it; for it would be absurd to say that out of those drivers who have been found both negligent and financially irresponsible, those alone should be disciplined who could not persuade their creditors to be lenient. Yet it is doubtful whether the amendment made any very substantial change. The origi-

nal statute in fact gave the creditor power at any time to restore the license by a complete satisfaction of the judgment; and the amendment merely added to this by enabling him to withdraw his consent, once given, after six months. In any case, whether that change conflicted with Sec. 17, or could be reconciled with the original scheme, we need not decide for reasons that will appear.

The commissioner defends the amendment of 1939 by saying that it was a fair implementation of the purpose of the original section, because it merely relieved the clerk of an irksome duty. He had been obliged to find out whenever a judgment had remained unpaid for fifteen days, whether it was for damages due to negligent driving. Instead of this the amendment set up an automatic system depending upon the creditor's interest in starting the clerk into action. This distinction is, however, more apparent than real because under the section as it stood before 1939, the creditor had the same incentive and he was as likely as thereafter to advise the clerk of the judgment, after which the clerk was bound to proceed. The only change was that after 1939 the clerk could not proceed sua sponte, and that the amendment did thereafter in theory allow the creditor to hold off the suspension. But again, not only could he have done that before 1939 by a satisfaction of the judgment, but the chance that the clerk would have acted without being prodded by the creditor must have been very remote. This amendment also really made very little change in substance.

However, we need not pass on the constitutionality of either of the amendments, for it is well settled in New York, as elsewhere, that a statute itself constitutional, is not affected by an unconstitutional amendment; the amendment is brutum fulmen and drops out as though never passed. People ex rel. Farrington *v.* Mensching, 187 N. Y. 8, 22, 23; Markland *v.* Scully, 203 N. Y. 158, 166; People *v.* Klinck Packing Company, 214 N. Y. 121, 140; Buffalo Gravel Corp. *v.* Moore, 201 App. Div. 242, 248, affirmed on other grounds, 234 N. Y. 542. This doctrine is really no more than an instance of another doctrine, which happens to be especially favored in New York, that a statute will survive the excission of unconstitutional parts, unless it

is apparent that the legislature would not have enacted it with the invalid parts out of it. New York Central & H. R. R. R. *v.* Williams, 199 N. Y. 108, 116; People *v.* Beakes Dairy Co., 222 N. Y. 416, 431, 432; People ex rel. Alpha P. C. Co. *v.* Knapp, 230 N. Y. 48, 60; People *v.* Mancuso, 255 N. Y. 463, 474; Bronx G. & E. Co. *v.* Maltbie, 268 N. Y. 278, 292; Gaynor *v.* Marohn, 268 N. Y. 417, 430. In the case at bar the clerk did remit a certified copy of the judgment to the commissioner; and it makes no difference whether he did so upon the creditor's demand, or sua sponte. The creditor has made no attempt to restore the license, and may never do so; if he does, the commissioner will have to decide whether or not to comply with his demand. As things stand, we need decide therefore only upon the act as it was in 1936, and we agree with Munz *v.* Hartnett, supra (6 Fed. Supp. 158) that it was valid. The temporary injunction will be vacated and the complaint will be dismissed.

Reitz v. Mealey.

I concur.

Alfred Coxe, D. J.

Endorsed: Bk. 28886. United States District Court, Northern District of New York. George C. Reitz, Plaintiff, v. Carroll E. Mealey, Commissioner, Defendant.

Opinion. L. Hand, C. J. Filed Aug. 10, 1940. G. A. Porter, Clerk.

EXHIBIT "B".

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

GEORGE C. REITZ, *Plaintiff*

vs.

CARROLL E. MEALEY, as Commissioner of Motor Vehicles of the State of New York, *Defendant*.

COOPER, *J.*, Dissenting:

The writer cannot concur with the majority opinion for the reasons appearing herein.

Section 94(b) as it was in 1933 was held a valid exercise of the State's police power in the case of Munz *v.* Hartnett, 6 Fed. Supp. 158, Decided December 20, 1933.

As the Section then read it was the duty of the Commissioner of Motor Vehicles, upon receiving a certified copy of an unsatisfied judgment, to forthwith suspend the operator's or chauffeur's license and all the registration certificates of any person "in the event of his failure within 15 days thereafter to satisfy every judgment—for damages on account of personal injury, including death, or damages to property in excess of $100.00, resulting from the operation of a motor vehicle by him or his agent, or any other person for whose negligence he shall be liable and responsible."

The section further provided that such license and registration certificate:

"shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied and subsisting, until said judgment or judgments are satisfied or discharged, except by a discharge in bankruptcy, to the extent of or at least five thousand dollars for an injury to one person in one accident and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident, and until the said person gives proof of his ability to respond in damages as required in Section 95-c of this chapter for future accidents."

The section also provided as follows:

"It shall be the duty of the clerk of the Court, or of the Court, where it has no clerk, in which such judgment is rendered, to forward immediately after the expiration of said fifteen days as aforesaid, to such Commissioner, a certified copy of such judgment or a transcript thereof."

It will thus be seen that the provisions were mandatory for the permanent suspension of the operator's or chauffeur's license and registrations until judgments are paid to

the extent prescribed in the statute and the liability insurance furnished as provided in Section 94 (c).

Suspension of license automatically followed failure within fifteen days to pay the judgment to the extent prescribed to give liability insurance against future accidents.

The negligent and defaulting driver or owner could never again have operator's or chauffeur's license or registration certificate until he paid the judgment to the extent specified and gave the liability insurance required (by section 94-c) as proof of his ability to respond in damages for future accidents.

By 1936 the period of suspension because of non-payment of the judgment specified was reduced to three years, but the same proof of ability to respond in damages for future accidents by furnishing liability insurance was required.

In 1936 the statute was further amended to read as follows:

"Provided, however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the Commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter."

In 1939, Section 94-b was re-enacted, including the above amendment of 1936 and by inserting in the section the words italicized in the quotation from the section.

"It shall be the duty of the clerk to forward immediately—*upon written demand of the judgment creditor or his attorney* a certified copy of such judgment or a transcript thereof."

This insertion is a direction to the Clerk to forward a copy of the judgment to the Commissioner of Motor Vehicles *upon written demand* and not otherwise. This means that without such demand the clerk has no duty.

It is thus clear that since the 1939 re-enactment of Section 94-b, nothing happens to the judgment debtor unless the judgment creditor wills it so. Except for such action by the

judgment creditor, the debtor may apparently drive for the rest of his life without paying the judgment and without obtaining any liability insurance.

On the other hand, action by the judgment creditor will prevent the judgment debtor driving for a single day unless the latter comes to terms with the creditor.

The creditor has but to make written demand on the clerk and the latter must forward "immediately" to the commissioner and the commissioner must thereupon suspend the debtor's license.

The provision inserted in the statute in 1936 and now a part thereof, that if the judgment creditor consents in writing license "may be allowed" by the Commissioner for six months and thereafter until such consent is revoked in writing, is mandatory in legal effect in the absence of any provision that license may be allowed "within the discretion of the commissioner" or "with the approval of the commissioner."

"May" must be construed as "shall" when the contest or subject matter requires such construction.

Supervisors *v.* U. S., 4 Wall. 435.

In U. S. *v.* Thoman, 156 U. S. 353, 359, it is said:

"It is a familiar doctrine that when a statute confers a power to be exercised for the benefit of the public or of a private person, the word "may" is often treated as imposing a duty rather than conferring a discretion.

Mason *v.* Pearson, 9 How. 248.

Washington *v.* Pratt, 8 Wheat. 681.

Supervisors *v.* U. S., 4 Wall. 435."

In People Ex Rel Doscher *v.* Sisson, 222 N. Y. 387, 395, it was held:

"The authorization created by the word "may" was mandatory and not permissive. It is a general though not inflexible rule that permissive words used in the statutes conferring powers and authority upon officers or bodies will be held mandatory when the act authorized to be done concerns the public interest or the rights of individuals" (citing cases).

It will be seen that this section makes the Commissioner of motor vehicles a disguised collection agent for the judgment creditor. All public policy of protection for the public is eliminated. No longer must the non-paying judgment debtor inescapably lose permanently, or for three years, his right to operate a motor vehicle, unless he pays the judgment to the extent defined in the section.

He now has the privilege to operate the motor vehicle without compliance with the statute as it was, but that privilege is within the sole control of the judgment creditor. He must bargain with the creditor for installment payments or other consideration satisfactory to the creditor.

If terms are not made, the judgment creditor makes written demand on the clerk of the Court and the latter is required to forward immediately to the Commissioner a certified copy of the judgment. The Commissioner must thereupon suspend the judgment debtor's license. Immediately upon the later coming to terms with the judgment creditor, the judgment creditor by written consent requires the commissioner to revoke the suspension for six months. At the end of six months, if terms are not complied with, suspension again ensues. If terms are complied with no suspension takes place at all. This consent to operate may cover the whole three years period.

No public officer has any power to deny the judgment creditor's will, whoever that creditor may be. The statute makes it the duty of the Clerk of the Court and the Commissioner to carry out the judgment creditors will in suspending or not suspending the license. That the Clerk and the Commissioner will be compelled by mandamus to act as the judgment creditor demands is without doubt.

Jones *v.* Harnett, 247 A. Div. 7, Affirmed 271 N. Y. 626.

It is quite true that the judgment debtor need not accept the demand which the judgment creditor may make as a condition of raising the three year ban, but accept he must or lose the right or privilege of operating an automobile on the public highway. If his occupation is that of driving an automobile or truck, as here, this means that his livelihood is in the sole control of the judgment creditor.

Under this statute all pretense of the exercise of the police power of the State for the protection of the public

using the highways by suspending the license for three years must be deemed to be abandoned.

The ultimate power of suspension is exclusively vested in the discretion of a private citizen.

Moreover, the private citizen may at some time be not a citizen at all but the worst felon out of prison, for his right to sue is not lost except in case of life imprisonment (Section 511 N. Y. Penal Law).

Statutes are to be construed by what is possible under them.

People *vs.* Klinck Packing Company, 214 N. Y. 121, 139.

This statute is unique in delegating its enforcement to unknown private citizens in their discretion and for their own interest, and no case passing a like statute has been found. But authorities have been found analogous in principle.

An act attempting to delegate legislative power even to a public officer to be exercised in his discretion is invalid.

People *vs.* Klinck Packing Company, 214 N. Y. 121, 138 Supra.

How much more invalid is the attempt to delegate such power to unknown and unknowable private citizens to be exercised in their discretion.

It is held in substance that the state police power can neither be abdicated nor bargained away and is inalienable even by express grant.

Atlantic Coast Line Ry. *vs.* Goldsboro, 232 U. S., 548, 558.

The State may not surrender or bind itself not to exert its police power.

Phillips Petroleum Company *vs.* Jenkins, 297 U. S. 629, 635, also

Chicago and A. R. R. Company *vs.* Traubarger, 238 U. S. 67, 77.

In Coppage *vs.* Kansas, 236 U. S. 1, it was held in substance that a statutory provision which is not a legitimate police regulation cannot be made such by being placed in the same act with a police regulation or by being enacted under a title that declares a purpose which would be a proper object for the exercise of that power.

In Henning *vs.* Georgia, 163 U. S. 299, 304, it was held that where a state statute purporting to be enacted under the

police power of the state has no real or substantial relation to the object sought, or is a palpable invasion of the rights secured by fundamental law, it is invalid.

In Gulf C. S. St. R. Railways *vs.* Ellis, 165 U. S. 150, it was decided that a statute which is merely to compel the payment of an indebtedness does not come within the scope of the police power.

It seems reasonably clear, therefore, that Section 94-b is not a valid exercise of the police power of the State.

By itself, the question of whether or not Section 94-b is a valid exercise of State Police Power might not present a Federal question and could not, therefore, be decided here if it were the sole question for decision. But where a federal question is presented, the Court has jurisdiction to decide the state questions.

In Greene *vs.* Louisville & I. Railway Company, 244 U. S. 899, the headnote says:

"In cases in which the jurisdiction of the District Court is properly invoked upon a substantial controversy arising under the Constitution of the United States, the jurisdiction of that Court and of this Court on Appeal, extends to the determination of all questions involved, including questions of State Law, irrespective of the disposition that may be found of the Federal question and of whether it be found necessary to decide it at all."

See also Chi G. W. R. *vs.* Kendall, 266 U. S. 94.

L. & N. Railway *vs.* Garrett, 231 U. S. 298.

The Federal question here is whether or not section 94-b violates any provision of the Federal Constitution or of laws enacted under power delegated exclusively to the Federal Government.

The decision here might rest upon the invalidity of Section 94-b as an exercise of State police power.

But the section also invades the field of bankruptcy delegated by the U. S. Constitution to the Federal sovereignty.

It is a transparent attempt by the State to provide a means by which the private citizen may, in violation of the bankruptcy laws of the United States, collect his judgment in whole or in part from one and an unknown class of persons, viz, those licensed to operate a motor vehicle on those high-

ways against whom a negligence judgment arising from the operation of such motor vehicle has been recovered and remains unpaid, which judgment is discharged under the bankruptcy laws or will be discharged.

The Statute expressly says that the license when suspended at the judgment creditors discretion:

"shall remain so suspended * * * while any such judgment or judgments remain unstayed, unsatisfied and subsisting either until said judgment or judgments are satisfied or discharged *except by discharge in bankruptcy* to the extent * * *" etc.

In other words, it is an attempt on the part of the one state to withdraw from the Federal Government, for the benefit of a limited class of persons, a portion of the bankruptcy power delegated by the States to the Federal Government in the Constitution and thereby destroy the uniformity of the bankruptcy laws, so far as the State of New York is concerned. One of the functions of that Federal Power under the Constitution is to declare what judgments are dischargeable and to provide for their discharge.

When the bankrupt is discharged from his debts under the Federal Bankruptcy Law, no state has power to make any sanctions or procedure by which a discharged judgment may nevertheless be collected under whatever guise that sanction or procedure may be dressed.

When a state by statute, not a valid exercise of police power, attempts to do so, its statute invades the Federal field of bankruptcy, and is in conflict with the Federal Constitutional power.

In Gilbett's Collier on Bankruptcy, (4th Ed.) at Page 2 it is said:—

"The bankruptcy act having been adopted by Congress under the Constitutional delegation of power is the supreme law of the land and its provisions are paramount to any state statute."

Numerous authorities might be cited:—The following suffices.

Local Loan Company *vs.* Hunt, 292 U. S. 234, 244, 245.

That the discharge of bankrupts from dischargeable debts is a matter of public interest was declared in Hanover National Bank *vs.* Moyees, 186 U. S. 181, where the Court said at Page 192—

"The determination of the status of the honest and unfortunate debtor by his liberation from encumbrance on future exertion is a matter of public concern and Congress has power to accomplish it throughout the U. S. by proceedings at the debtor's domicil."

To the same effect are:—

Williams *vs.* U. S. Fidelity & Guaranty Company, 236 U. S. 549, 555-555.

Local Loan Company *vs.* Hunt, 292 U. S. 234, 244 Supra.

Courts are not to be influenced by the hardship which some innocent person may suffer because judgments recovered against negligent operators of automobiles are dischargeable in bankruptcy and there, therefore uncollectible.

The remedy lies with Congress which can make such judgments non-dischargeable, not with the Courts or the State Legislature.

It is said in the majority opinion that the provisions placed in Section 94-b in 1936 empowering the judgment creditor to require the Commissioner to give permission for the debtor to operate his automobile for six months and thereafter until the creditor withdraws the permission, and the 1939 insertion which together with the 1936 provision gives the creditors sole power to start or not start the suspension proceedings, may be entirely stricken out of the statute by decision of this Court and still leave the remainder of the section valid and constitutional.

The majority opinion does not say that these 1936 and 1939 provisions are unconstitutional but holds such decision not necessary because they may be stricken out and leave a valid and constitutional remainder of the section.

The writer cannot concur in this view.

It is, of course, well recognized, that if some part or parts of a statutory scheme or regulation is or are unconstitu-

tional and readily separable and the general scheme and regulation as intended by the Legislature remains unimpaired, such part or parts may be stricken out and the remainder of the statute held valid.

Such is the effect of the authorities cited in the majority opinion.

Reference to one will illustrate this.

People Ex Rel Alpha P. Company *vs.* Knapp, 230 N. Y. 48 was concerned with a revenue act.

The Court there found a condemned part easily separable and said at Page 62:—

"Thus viewing it, I cannot doubt that the exclusion of interest on intangibles will leave the *essence of the scheme intact.*"

The other cases are generally of like nature.

The teaching of these cases is that only where the general scheme and intent of the statute is not impaired, separable parts not constitutional may be stricken out and the remaining held valid.

These cases are not controlling here because here we do not have any such statute as those there involved and because here, after the elimination of the condemned parts, the essence of the statutory scheme does not remain intact.

In statutory construction it is the duty of the Courts to find and give effect to the legislative intent.

Matter of Hering, 196 N. Y. 218, 221.

Osborne *vs.* Int. Ry. 226 N. Y. 421, 425.

People Ex. Rel. Babcock *vs.* Law, 209 App. Div. 526.

Courts will assume that legislatures in passing an amendment to a statute intended to effect such material change as is indicated by the amendment, otherwise the legislation would be nugatory.

People Ex. Rel Sheldon *vs.* Board of Appeals, 234 N. Y. N. Y. 484.

This section 94-b is not a complicated taxing act as in some of the cases referred to in the majority opinion, nor a complex regulatory act as in Buffalo Gravel Company *vs.* Moore, 201 App. Div. 242. This act is an integral and indivisible unity. It is but one thing. It has but one object, viz, a

statutory scheme by which the negligence judgment creditor may collect his judgment, which scheme places all power of starting, stopping, and restarting the statutory machine under exclusive control of the creditor and provides that the Court Clerk and Commissioner can act only as he commands, all of which is but a statutory scheme by which the negligence creditor may collect a debt dischargeable in bankruptcy.

That the legislature meant it so also admits of no doubt for in 1936 and 1939 it made the changes (including re-enactment in 1939) deliberately and intentionally changing to such an act as above outlined, from an act providing for mandatory automatic suspension of a defaulting judgment debtors license forever (later changed to three years) over which suspension the judgment creditor had not one iota of power or control.

When the part of the statute found unconstitutional is so connected with the general scope and purpose of the legislation that its imperfections destroy the latter, it cannot be eliminated and the statute as a whole must fall.

People *vs.* Klinck Packing Company, 214 N. Y. 121, 140 Supra.

Where the invalid is so commingled with the valid, is so large and essential a part of the general scheme that Revision is impossible, the statute as a whole is invalid.

Meyer *vs.* Wells Fargo Express Company, 223 U. S. 298, cited with approval in

People Ex. Rel Alpha P. Company *vs.* Knapp, 230 N. Y. 48, 60 Supra.

Ives *vs.* South Buffalo Railway Company, 201 N. Y. 271, 317.

An interesting discussion of the difficulties of attempting to separate condemned parts in a statute devoted to a limited object is contained in the dissenting opinion of Judges Kellogg & O'Brien in People *vs.* Mancuso, 255 N. Y. 463, 487, where the dissenting Judges held:—

"Nevertheless, the two parts, valid and invalid, must be 'capable of separation,' (Supervisors *vs.* Stanley, Supra, Page 312), the valid part will be retained only "provided the allowed and prohibited parts are severable." (Packet

Company *vs.* Keokuk, 95 U. S. 80, 89); it will be retained only if the unconstitutional part is clearly "separable". (Berea College *vs.* Kentucky supra; Huntington *vs.* Worthen supra.) In all the cases cited, and in many more, where a constitutional provision has been "separated" and saved, although contained in the same clause with an unconstitutional provision, the statutes considered have been of wide application, comprehending as the subjects of a tax, a prohibition, or a regulation, non-taxable properties or matter incapable of prohibition, or regulation by the enacting statute as well as properties or matters properly the subject of its enacting powers. The provisions allowed to remain have by their terms covered permissible subjects; subjects forbidden by reason of the constitution,--have merely been released from the statutory coverage."

If the condemned parts are stricken out of Section 94-b, it does not leave the "essence of the scheme intact", as in People ex rel Alpha P. Company *vs.* Knapp, 230 N. Y. 48 Supra. On the contrary it completely destroys the intended statutory scheme.

What is left of the Section is not the statutory scheme now embodied in the statute, but it is the scheme of the statute as it was before 1936. This scheme the majority of the Court approve and hold may be saved and made effective as a laudable statute.

But if this is done, gone are all such rules of construction as that it is the duty of the Courts to find and give effect to the legislative intent, which is here so manifest; that when the legislature amends a statute it intends to make such material change as is indicated by the statute; that a statute will not survive the excission of unconstitutional parts if it is apparent that the legislature would not have enacted it with the invalid parts out of it; that courts can only separate and strike out parts of a statute as unconstitutional and hold the remainder of the statute valid if that remainder embodies and preserves the essence of the general scheme and purpose of the statute.

How then can it reasonably be said here that the condemned parts are separable and that what remains embodies the "essence of the scheme intact?"

In short, the statute is one thing as it stands. To strike out the condemned parts is to change the statute to something quite different.

For the Court to strike out the condemned parts and thereby change the statute into something not intended or contemplated by the legislature in 1936 and 1939 borders on judicial legislation. It is an invasion by the judicial power of the governmental field reserved for the legislature power.

It is in effect saying to the State Legislature that it cannot have the statute that it deliberately created by amendment in 1936 and by re-enactment in 1939 with further change, but it can have and must have a statute which the Court approves as a salutary statute but which the legislature deliberately discarded and abandoned in 1936 and 1939.

It matters not that when the legislature next meets it has power to repeal the court-approved statute and enact such statute as it pleases. It is no less an invasion during the interim.

This is not a state Court passing in a state statute challenged as violating the state constitution.

This is a Federal court invoked to determine whether or not a state statute violates the Federal constitution.

The writer cannot concur in the majority opinion and holds that the statute is a unity and inseparable, is unconstitutional and void and its enforcement should be restrained.

August 13, 1940.

Endorsed: Bk. 28886. United States District Court, Northern District of New York. George C. Reitz vs. Carroll E. Mealey, Commissioner of Motor Vehicles of the State of New York.

Opinion: Frank Cooper, U. S. District Judge.

Orig. filed Aug. 14, 1940. G. A. Porter, Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

Appellant,

vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK,

Appellee.

BRIEF FOR APPELLANT

HARRY A. ALLAN,
90 State Street,
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Attorney for Appellant.

SUBJECT INDEX

TABLE OF CASES CITED

TABLE OF STATUTES CITED

LEGAL PERIODICALS CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

Appellant,

against

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK,

Appellee.

BRIEF FOR APPELLANT

NATURE OF THE APPEAL

This is an appeal from the final judgment of a Statutory District Court of Three Judges, convened pursuant to Section 266 of the Judicial Code, dismissing the complaint of the plaintiff herein.

The opinion of the Court below is reported officially as follows:

Reitz 1. *Mealey*, 34 Fed. Supp. 532.

JURISDICTION

Jurisdiction of the Supreme Court of the United States is invoked pursuant to Sections 238 and 266 of the Judi-

cial Code, as amended (U. S. Code, Title 28, Secs. 345, 380), permitting direct appeal from a Statutory District Court of Three Judges from the decision or judgment of said Court granting or denying an injunction based upon the alleged unconstitutionality of a state statute.

STATEMENT OF CASE

Section 94b of the Vehicle and Traffic Law of New York provides in substance that the license to operate an automobile of a person against whom a judgment has been rendered arising out of a motor vehicle accident shall be suspended if such judgment is not satisfied or discharged within fifteen days after it becomes final, *except by a discharge in bankruptcy.* Such a judgment was obtained against appellant herein by Anson Shafer, and, upon his request, appellant's chauffeur's license was suspended by the defendant pursuant to said section. Appellant was adjudicated a voluntary bankrupt, listing said judgment, and commenced this action to restrain the enforcement of the provisions of Section 94b. The only question raised in said action was the constitutionality of said Section 94b. The action was duly referred, pursuant to Section 266 of the Judicial Code, to a Federal Statutory District Court, convened for the purpose of determining the constitutionality of Section 94b. The Statutory District Court dismissed appellant's complaint and held that Section 94b is constitutional, one judge dissenting.

Reitz v. *Mealey*, 34 Fed. Supp. 532.

SUMMARY OF ARGUMENT AND ASSIGNMENT OF ERROR

The question presented is the constitutionality of Section 94b of the Vehicle and Traffic Law of the State of New York. Section 94b is fully set forth in the Appendix at the end of this brief. Appellant claims that Section 94b is unconstitutional because it conflicts with

(1) The Bankruptcy Clause of the Constitution of the United States and the Bankruptcy Act of Congress; and

(2) The Fourteenth Amendment to the Constitution of the United States; and

(3) That the Court below erred in dismissing plaintiff's complaint.

ARGUMENT

POINT I

Conflict With Constitution and Bankruptcy Act

The judgment obtained against appellant is one that is dischargeable in bankruptcy.

> Bankruptcy Act, Secs. 14, 17 (U. S. Code, Title 11, Secs. 32, 35).
>
> *In re Wakefield*, 207 Fed. 180, 186.

The exception of a bankruptcy discharge from the provisions of Section 94b as a means of discharging the judgment against appellant furnishes the first and chief ground for this appeal. The Constitution of the United States directs Congress to establish uniform laws of bankruptcy (U. S. Code, Art. 1, Sec. 8, Clause 4). Congress, alone, can prescribe what type of claims shall be excepted from a discharge in bankruptcy. In the aforesaid Section 94b the Legislature of the State of New York has in effect added to Section 17 of the Bankruptcy Act an additional type of claim which is not fully dischargeable in bankruptcy, and appellant is deprived of the full effect of the provisions of the Bankruptcy Act by the restrictions imposed upon him by the New York State Legislature.

> *In re Perkins*, 3 Fed. Supp. 697.

In *International Shoe Co.* v. *Pinkus* (278 U. S. 261), it is said,

> "A state is without power to make or enforce any law covering bankruptcies that . . . conflicts with the national bankruptcy laws."

and

> "States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations."

Section 94b further provides that it shall be the judgment creditor who instigates the proceeding out of which the suspension of appellant's license becomes effective. Appellant's license would remain in force forever were it not for intervention by the creditor. At his request suspension of the license is mandatory.

> *Matter of Jones* v. *Harnett*, 247 App. Div. 7, 11; aff'g 271 N. Y. 626; reargument denied, 272 N. Y. 510.

As against a bankrupt the section has placed in the hands of a particular type of creditor a potent weapon, and favored him with a preference to enable him to collect his claim, again not sanctioned by Congress.

Further, the section makes an unlawful delegation of power to an unknown person to command the appellee, a State officer, to start or stop the operation of Section 94b, and have appellant's license suspended or returned for a limited period or permanently, all in the sole discretion of said creditor. Appellee thus becomes the agent of the creditor, the character or motives of whom he cannot question, to assist the creditor in the enforcement and collection of his claim, notwithstanding the discharge of the debt in bankruptcy, thus negativing any purpose to the section except to favor that creditor. No power is given to the defendant Commissioner to act of his own volition under the section, but he must obey the command of the creditor.

> *Matter of Jones* v. *Harnett* (supra).

The purpose of the Bankruptcy Act is to rehabilitate the debtor and to permit him to absolve himself from all the debts which Congress has said are dischargeable.

Kalb v. *Feuerstein*, 308 U. S. 443.

The effect of the enforcement of Section 94b is to deprive the appellant herein, a truck driver, of his means of livelihood for three years until he has paid a debt that may have already been discharged in bankruptcy becuse the State Legislature has expressly decreed that the effect of such a debt survives its discharge in bankruptcy. Rehabilitation of the debtor is thus prevented.

The Constitution gives to Congress the right to establish uniform laws on the subject of bankruptcy throughout the United States. How can bankruptcy laws remain uniform if one state has the right to deprive a person, possibly not even a resident of its state, of the protection of a discharge in bankruptcy provided for by the Constitution and Congress?

Research discloses that up to 1933 thirteen states had statutes similar to Section 94b, and yet New York State was the only state in which a discharge in bankruptcy was specifically excepted.

See

43 Yale Law Journal, 344; 47 Harvard Law Review, 870; 39 Michigan Law Review, 645; 8 Chicago Law Review, 326.

In *Ellis* v. *Rudy* (171 Md. 281), the Court considered a similar statute in an action for mandamus to compel defendant, the Commissioner of Motor Vehicles of Maryland, to reissue petitioner's suspended operator's license. The statute of Maryland in effect at that time was substantially similar to the New York statute in question, but the words "except by a discharge in bankruptcy" were omitted.

The Maryland Court granted mandamus to the plaintiff, a bankrupt, on the ground that the discharge of the plain-

tiff in bankruptcy operated to discharge the debt, pointing out that the Maryland statute specifically omitted the above quoted words, and stated the rule to be that the National Bankruptcy Act would prevail in any conflict that might arise with the statutes of the several states if the latter should impair the function of the Bankruptcy Act in the relief of debtors to such an extent as to defeat the purpose of the Act. The Court also said,

> "With these subsisting legal relations and their ensuing results kept in mind, it is clear that the purpose of the Bankruptcy Act is frustrated by the provisions of Section 187b of Article 56, if the release of the bankrupt of all indebtedness under the judgment mentioned is not a stay, satisfaction, or discharge of the judgment in personam within the meaning of Article 56. If this were not the intention of the General Assembly, an irreconcilable conflict would arise between the federal and state enactments. The creditor who cannot enforce the debt because of the discharge in bankruptcy is given, so the argument runs, the power to coerce its payment in whole or in part."

The crux of this appeal can be said to hinge upon the fact that the statute is designed to aid the creditor in collecting his judgment and has been expressly so interpreted. The statute, read as a whole, particularly since amended, clearly shows a definite trend in this direction. The original statutes might have been considered an exercise of police power to protect travellers on the highway, but it is inconceivable that the Legislature of the State of New York intends the operation of a police measure to be under the exclusive control of a creditor of the person against whom the statute is aimed.

That the purpose of the section is to give aid to the creditor, and that its provisions are mandatory when insisted upon by the creditor, clearly appears from the interpretation thereof by the New York State Courts.

In *Matter of Jones* v. *Harnett* (247 App. Div. [N. Y.], at p. 11), the Court said,

> "The purpose of the Legislature in enacting Section 94b was to give some aid to unfortunate people who frequently are maimed and disabled as the result of negligent and careless operation of a motor vehicle. The provisions of Section 94b are mandatory and must be given full force and effect."

Mandamus was granted against the Commissioner of Motor Vehicles in that case, compelling the suspension of the license of the judgment debtor. This decision was affirmed by the New York Court of Appeals without opinion (271 N. Y. 626; reargument denied, 272 N. Y. 510).

How the Court can reconcile these mandatory provisions of Section 94b, effectually designed to aid a particular type of creditor, with the right of a bankrupt to obtain the full discharge of his obligations contemplated by the Constitution and the Bankruptcy Act is not readily apparent. Hardship may be imposed upon someone. Is it for the New York State Legislature to say that Congress cannot assist him whom the Constitution has said must be aided? Congress has amended the Bankruptcy Act since automobile negligence actions have become so numerous and as yet has not seen fit to except this type of claim from Section 17 of the Act (52 U. S. Stat. at Large, 851), and it is submitted that where state legislation conflicts with an Act of Congress on a subject over which Congress has exclusive jurisdiction, the latter must prevail.

In *International Shoe Co.* v. *Pinkus* (278 U. S. 261), the Court said,

> "The power of Congress to establish uniform law on the subject of bankruptcies . . . is unrestricted and paramount . . . The purpose to exclude state action . . . may be manifested without express declaration . . . In respect to bankruptcies the in-

tention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation."

Legislation of Congress, if constitutional, must necessarily supersede all state legislation on the same subject.

> *Prigg* v. *Commonwealth*, 16 Pet. 539, 617, 618; *Northern Pac. Ry. Co.* v. *Washington*, 222 U. S. 370, 378; *Erie R. R. Co.* v. *New York*, 233 U. S. 671, 681.

In the last cited case it was held that where Congress acts on a matter within its exclusive jurisdiction there is no division in the field of legislation and the legislating power of a state ceases to exist when Congress manifests its constitutional authority in regard to such matters.

See *Kalb* v. *Feuerstein* (308 U. S. 433), as indicating the extent to which the Court will go to effectuate the expressed intention of Congress to aid a bankrupt.

POINT II

Conflict With Fourteenth Amendment

Section 94b of the Vehicle and Traffic Law of the State of New York deprives appellant of his property without due process of law by subjecting appellant to additional burden and expense due to a discharged judgment in bankruptcy.

By permitting the remedy of the creditor to survive the discharge of the debtor in bankruptcy, and by placing in the hands of a creditor the entire motivating force of a statute allegedly enacted as an exercise of the police power reserved to the state, the appellant is deprived of his property, to wit, the right to drive an automobile on the highways of the State of New York and elsewhere, without due process of law.

No state shall abridge the privileges and immunities of a citizen of the United States (U. S. Const., 14th Amendment).

That a person shall be entitled to a discharge in bankruptcy is a privilege guaranteed to him by the Constitution and that he shall remain immune from the effect of claims discharged in bankruptcy, pursuant to that Act, is equally forceful, and the exception of a discharge in bankruptcy from Section 94b deprives appellant of these privileges and immunities.

Can a state expressly nullify the effect of the Constitution and Acts of Congress under the guise of the exercise of a police power?

A bankruptcy discharge may be pleaded as a bar to any action on a dischargeable debt and to any remedy which the creditor has to enforce payment thereon.

In re Hicks, 133 Fed. 739.

Should it be claimed that a bankruptcy discharge is not a satisfaction of the claim but only a bar to creditor's civil remedy, it may be seen from the statute that creditor's remedy under Section 94b survives the discharge in bankruptcy and the rehabilitation of the debtor contemplated by the Bankruptcy Act is prevented.

By Section 94b, in order to avail himself of the right to drive an automobile, his only means of livelihood, appellant must now, despite the discharge in bankruptcy, pay the judgment and furnish a financial responsibility bond not required of other drivers, thus discriminating against appellant and abridging his privileges and immunities as a citizen of the United States and the guaranties provided for him by the Constitution are set at naught.

CONCLUSION

For the foregoing reasons appellant respectfully contends that the provisions of Section 94b of the Vehicle and

Traffic Law of the State of New York are unconstitutional and void and the judgment of the Court below should be reversed and injunction should issue restraining the appellee from enforcing against appellant the provisions of Section 94b.

Respectfully submitted,

HARRY A. ALLAN,

Attorney for Appellant.

Office and Post-Office Address, 90 State Street, Albany, N. Y.

APPENDIX

New York State Vehicle and Traffic Law, Section 94b (New York Laws of 1929, Chapter 695, as Last Amended by Laws of 1939, Chapter 618)

SECTION 94b. *Failure to satisfy judgments; revocation of licenses and security.* The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure within fifteen days thereafter to satisfy every judgment in excess of one hundred dollars which shall have become final by expiration without appeal, of the time within which an appeal might have been perfected or by final affirmance on appeal, rendered against him by court of competent jurisdiction in this state, or in any other state or the District of Columbia, or of any district court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damages to property, resulting from the ownership, maintenance, use or operation of a motor vehicle by him, his agent, or any other person for whose negligence he shall be liable and responsible, shall be forthwith suspended by

the commissioner of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered, showing such judgment or judgments to have been still unsatisfied after the expiration of fifteen days after the same became final as aforesaid, and, except as otherwise provided in this chapter, shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied or discharged, except by a discharge in bankruptcy, to the extent of at least five thousand dollars for an injury to one person in one accident, and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident or three years shall have elapsed since such suspension, and until the said person gives proof of his ability to respond in damages, as required in section ninety-four-c of this chapter for future accidents. Provided, however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter. It shall be the duty of the clerk of the court, or of the court, where it has no clerk, in which any such judgment is rendered, to forward immediately, upon written demand of the judgment creditor or his attorney, after the expiration of said fifteen days as aforesaid, to such commissioner a certified copy of such judgment or a transcript thereof. In the event the defendant is a nonresident it shall be the duty of the commissioner to transmit to the commissioner of motor vehicles or other officer officers having in charge the licensing of chauffeurs and operators and the registration of motor vehicles of the state or of any province of Canada of which the defend-

ant is a resident, a certified copy or copies of the said judgment. If after such proof has been given, any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, such license and certificates shall again be and remain suspended and no other license or certificate shall be issued to such person while any such judgment remains unsatisfied and subsisting, provided, however, that

(1) when five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident, or

(2) when subject to the limit of five thousand dollars for each person, the sum of ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of more than one person as the result of any one accident, or

(3) when one thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle by such judgment debtor, his agent or by any other person for whose negligence the owner shall be liable and responsible, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purpose of this section only.

If any such motor vehicle owner or operator shall not be a resident of this state, the privilege of operating any motor vehicle in this state and the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn, while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than fifteen days, as aforesaid and shall not be renewed, nor shall any operator's or chauffeur's license be issued to him nor any motor vehicle registered in his name until either every such judgment shall be stayed, satisfied

or discharged as herein provided or three years shall have elapsed since such withdrawal, and until such person shall have given proof of his ability to respond in damages for future accidents, as required in the next section. This section shall not apply to any judgment where the cause of action arose prior to September first, nineteen hundred and twenty-nine.

No license or registration certificate shall be suspended pursuant to this section if, at the time the cause of action resulting in the judgment arose, the vehicle whose maintenance, use or operation caused the damage was covered by a surety bond or an insurance policy issued pursuant to section seventeen of this chapter or by an insurance policy, issued by a company authorized to do business in this state, insuring the owner and operator thereof against loss from the liability imposed by law for injury to persons or property to the amount of five thousand dollars on account of bodily injury to or death of any one person, to the amount of ten thousand dollars on account of bodily injury to or death of more than one person caused by any one accident and to the amount of one thousand dollars for damage to property and no license shall be suspended pursuant to this section if the holder thereof, at the time the cause of action resulting in the judgment arose, was insured under a motor vehicle liability policy as defined in this article, and these provisions shall be both prospective and retrospective.

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. [redacted] 21

GEORGE C. REITZ,

Appellant,

vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK

Appellee.

BRIEF OF APPELLANT ON REHEARING

HARRY A. ALLAN,
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Albany, N. Y.
Attorney for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

Appellant.

against

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK,

Appellee.

BRIEF OF APPELLANT ON REHEARING

Appellant, George C. Reitz, respectfully submits in addition to the points heretofore submitted by appellant on the original argument of this appeal, the following:

Upon the previous argument of this appeal some of the members of the Court indicated that the appeal was premature due to appellant's failure to be discharged in bankruptcy at said time, and that such fact might bar this action, therefore, appellant has annexed to this brief his discharge in bankruptcy.

On May 1, 1941, by Chapter 872 of the Laws of the State of New York, Section 94-b of the Vehicle and Traffic Law of the State of New York, was repealed, effective January 1, 1942. However, inasmuch as appellant's chauffeur's license was suspended pursuant to the provisions of said Section, such suspension remains effective commencing from the time when appellant remits said license to ap-

pellee, the Commissioner of Motor Vehicles of the State of New York, and due to the fact that a stay was granted, appellee has not obtained said license and therefore the effect of Section 94-b will be to permit the suspension of appellant's license to remain in full force and effect for approximately three (3) years subsequent to the repeal of the Statute, notwithstanding appellant's discharge in bankruptcy, thus compelling appellant to seek other means of livelihood.

In view of the vital effect of a decision by this Court not only upon the rights of appellant but also as a guide to other States, due to the fact that the Section complained of by appellant is the only Statute pertaining to Motor Vehicle financial responsibility which by its terms expressly excepts a discharge in bankruptcy as a means of fully discharging a debt, if section 94-b is constitutional, then other states may safely add similar provisions to their statutes, or Congress may deem it advisable to expressly include claims arising out of the operation of Motor Vehicles, in Section 17 of the Bankruptcy Act, instead of allowing the various States to impair the effect of a Discharge in Bankruptcy.

Appellant respectfully submits that the Judgment and Order appealed from should be reversed, and an injunction should issue restraining appellee from enforcing against appellant the provisions of Section 94-b of the Vehicle and Traffic Law of the State of New York, on the ground that said Section is unconstitutional, together with costs to appellant on this appeal.

Respectfully submitted,

HARRY A. ALLAN,
Attorney for Appellant.

Office and Post Office Address, 100 State Street,
Albany, N. Y.

APPENDIX "A"

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE

NORTHERN DISTRICT OF NEW YORK

IN THE MATTER OF GEORGE C. REITZ, *Bankrupt.*	Bankruptcy No. 28886

At the City of Albany, N. Y., in said district, on the 3rd day of June, 1941.

It appearing that George C. Reitz, of Cedar Hill, R. D. 1 Selkirk, in the County of Albany, State of New York, was duly adjudged a bankrupt on a petition filed by him on the 21st day of June, 1940; and

It further appearing that, after due notice by mail, no objection to the discharge of said bankrupt was filed within the time fixed by the Court;

It is ordered that the said George C. Reitz be, and he hereby is, discharged from all debts and claims which are made provable by said Act against his estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy.

(Signed) JACOB L. TEN EYCK,
Referee in Bankruptcy.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

NO. 686 21

GEORGE C. REITZ,

Appellant,

against

CARROLL E. MEALEY, as Commissioner of Motor Vehicles of the State of New York,

Appellee.

BRIEF FOR APPELLEE

JOHN J. BENNETT, JR.,
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Counsel for Appellee.

HENRY EPSTEIN,
Solicitor-General.

JACK GOODMAN,
Assistant Attorney General,
Of Counsel.

INDEX TO BRIEF

TABLE OF CASES

STATUTES

LEGAL PERIODICALS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,
Appellant,
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CARROLL E. MEALEY, as Commissioner of Motor Vehicles of the State of New York,
Appellee.

BRIEF FOR APPELLEE

THE OPINIONS OF THE COURT BELOW

The opinion of Judge Learned Hand, concurred in by Judge Coxe is reported in 34 F. Supp. 532 at p. 533, and appears at pp. 6-10 of the Transcript of Record. The dissenting Opinion of Judge Cooper is reported in 34 F. Supp. 532 at p. 535, and appears at pp. 11-22 of the Transcript of Record.

JURISDICTION

This Court on February 3, 1941, entered an order noting probable jurisdiction in this case.

Jurisdiction appears to exist by virtue of Judicial Code, Secs. 238 and 266 (28 U. S. C. A. Secs. 345 and 380). The appeal is from a final order and judgment of a three judge district court, convened pursuant to Section 266 of the Judicial Code, dismissing a complaint which seeks to enjoin the enforcement of a statute of the State of New York by restraining the action of a State officer upon the ground of the unconstitutionality of such statute.

STATEMENT OF THE CASE

This is an action brought to enjoin the Commissioner of Motor Vehicles of the State of New York from enforcing a suspension of the appellant's driver's license as a chauffeur. The order suspending the license (R. 4A-4B) was issued on May 29, 1940 pursuant to Section 94-b of the Vehicle and Traffic Law of New York (Cons. Laws, c. 71). The occasion for the order of suspension was the receipt by the appellee, the Commissioner, from the Clerk of the Supreme Court of Albany County of a transcript of a judgment, with evidence of its finality and nonpayment, rendered against the appellant in the sum of Five Thousand One Hundred Thirty-Eight Dollars and Twenty-Five Cents ($5,138.25). (R. 2.) The judgment had been obtained in an action to recover damages for personal injuries arising out of the operation of an automobile by the appellant herein. (R. 1.)

On June 21, 1940 the appellant was adjudicated a bankrupt and his proceeding in bankruptcy was duly referred (R. 1). Among his debts scheduled therein was the above described judgment (R. 1).

At the commencement of this action the question of appellant's discharge had not yet been determined (R. 1). It is admitted, however, that this judgment is dischargeable in bankruptcy.

The case comes to this Court on appeal from a final order and judgment of the District Court of the United States for the Northern District of New York, three judges sitting, dismissing the complaint. (R. 22.)

Appellant asserts the unconstitutionality of Section 94-b of the Vehicle and Traffic Law of New York on the ground that it violates (a) both Article 1, Sec. 8, Clause 4 and the Fourteenth Amendment of the Constitution of the United States, and (b) Section 17 of of the Bankruptcy Law (11 U. S. C. A. Sec. 35).

The Statute

Section 94-b of the Vehicle and Traffic Law, as last amended by L. 1939, ch. 618, provides:

> "*Sec. 94-b. Failure to satisfy judgments; revocation of licenses and security.*
>
> The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure within fifteen days thereafter to satisfy every judgment in excess of one hundred dollars which shall have become final by expiration without appeal, of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in this state, or in any other state or the District of Columbia, or of any district

court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damages to property, resulting from the ownership, maintenance, use or operation of a motor vehicle by him, his agent, or any other person for whose negligence he shall be liable and responsible, shall be forthwith suspended by the commissioner of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered, showing such judgment or judgments to have been still unsatisfied after the expiration of fifteen days after the same became final as aforesaid, and, except as otherwise provided in this chapter, shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied or discharged, except by a discharge in bankruptcy, to the extent of at least five thousand dollars for an injury to one person in one accident, and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident or three years shall have elapsed since such suspension, and until the said person gives proof of his ability to respond in damages, as required in section ninety-four-o of this chapter for future accidents. Provided, however, if the judgment

creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter. It shall be the duty of the cerk of the court, or of the court, where it has no clerk, in which any such judgment is rendered, to forward immediately, upon written demand of the judgment creditor or his attorney, after the expiration of said fifteen days as aforesaid, to such commissioner a certified copy of such judgment or a transcript thereof. In the event the defendant is a nonresident it shall be the duty of the commissioner to transmit to the commissioner of motor vehicles or other officer or officers having in charge the licensing of chauffeurs and operators and the registration of motor vehicles of the state or of any province of Canada of which the defendant is a resident, a certified copy or copies of the said judgment. If after such proof has been given, any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, such license and certificates shall again be and remain suspended and no other such license or certificate shall be issued to such person while any such judgment remains unsatisfied and subsisting, provided, however, that

1) When five thousand dollars has been credited upon any judgment or judgments ren-

dered in excess of that amount for personal injury to or the death of one person as the result of any one accident, or

(2) when subject to the limit of five thousand dollars for each person, the sum of ten thousand dollars has been credited upon any judgment or judgments in excess of that amount for personal injury to or the death of more than one person as the result of any one accident, or

(3) when one thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle by such judgment debtor, his agent or by any other person for whose negligence the owner shall be liable and responsible, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purpose of this section only.

If any such motor vehicle owner or operator shall not be a resident of this state, the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn, while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than fifteen days, as aforesaid and shall not be renewed, nor shall any operator's or chauffeur's license be issued to him nor any motor vehicle registered in his name until either every such judgment shall be stayed, satisfied or discharged as herein

provided or three years shall have elapsed since such withdrawal, and until such person shall have given proof of his ability to respond in damages for future accidents, as required in the next section. This section shall not apply to any judgment where the cause of action arose prior to September first, nineteen hundred and twenty-nine.

No license or registration certificate shall be suspended pursuant to this section if, at the time the cause of action resulting in the judgment arose, the vehicle whose maintenance, use or operation caused the damage was covered by a surety bond or an insurance policy issued pursuant to section seventeen of this chapter or by an insurance policy, issued by a company authorized to do business in this state, insuring the owner and operator thereof against loss from the liability imposed by law for injury to persons or property to the amount of five thousand dollars on account of bodily injury to or death of any one person, to the amount of ten thousand dollars on account of bodily injury to or death of more than one person caused by any one accident and to the amount of one thousand dollars for damage to property and no license shall be suspended pursuant to this section if the holder thereof, at the time the cause of action resulting in the judgment arose, was insured under a motor vehicle liability policy as defined in this article, and these provisions shall be both prospective and retrospective."

Although it has been amended many times since first enacted in 1929 (L. 1929, ch. 695), the sub-

stance of Section 94-b has remained the same. Because both opinions of the Court below, however, stressed certain amendments to the statute, we catalogue the more significant ones since 1929:

1. L. 1930, ch. 398—Added the provision that it shall be the duty of the Commissioner of Motor Vehicles to transmit a copy of the judgment to the Province of Canada if the defendant is a resident of Canada.

2. L. 1931, ch. 669—Added the provision that the license might be revoked if the judgment had been rndered "in any other state or the District of Columbia, or of any district court of the United States, or by a court of competent jurisdiction or any province of Canada." It was also provided that the judgment might be one for a "death" claim. It was also provided that the judgment might be one for damages resulting from the ownership, "maintenance, use" or operation of the motor vehicle.

3. L. 1934, ch. 438—Added the proviso that the section "shall not apply to any judgment where the cause of action arose prior to September 1, 1929."

4. L. 1936, ch. 293—Added the provision that the suspension of the license would be lifted if "three years shall have elapsed since such suspension." Thus, this amendment furnished an alternative to the existing provision that the suspension would be lifted if the judgment were satisfied or discharged.

5. L. 1936, ch. 448—Added the provision that "if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter."

6. L. 1936, ch. 771—Added the proviso that "the provisions of this section shall not be construed to affect a registration certificate or the license issued to the owner, operator or chauffeur of a motor vehicle engaged in the business of carrying passengers for hire who has procured an indemnity bond or insurance policy and who continues to provide such bond or policy pursuant to Section 17 of this chapter."

7. L. 1937, ch. 114—Deleted the above provision and substituted in its place the paragraph now constituting the last paragraph in Section 94-b. This provides in substance that no license or registration certificate may be suspended if at the time of the accident the motor vehicle or operator was covered by liability insurance in the Statutory amounts.

8. L. 1937, ch. 463—Restricted the section to judgments "in excess of one hundred dollars." Formerly the section applied to all judgments for personal injuries and judgments in excess of one hundred dollars for property damage.

9. L. 1939, ch. 618—Amended the provision dealing with transmission of a copy of the judgment to the Commissioner of Motor Vehicles to provide that it shall be the clerk's duty to forward the judgment "upon written demand of the judgment debtor or his attorney."

SUMMARY OF ARGUMENT

I. Section 94-b of the Vehicle and Traffic Law does not violate the Fourteenth Amendment of the Federal Constitution.

A. The requirement that the debtor furnish "proof of his ability to respond in damages for future accidents" is valid.

B. The provision that the license is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration, is valid.

II. Section 94-b of the Vehicle and Traffic Law does not violate either Article I, Section 8, Clause 4 of the Federal Constitution or Section 17 of the Bankruptcy Act.

A. Section 17 is intended merely to afford a defense to an action on the discharged judgment.

B. Section 17 is not intended to interfere with State legislation whose incidental effect is to compel the payment of a discharged judgment.

C. Section 94-b is valid even if its sole purpose is compensation to the judgment creditor.

POINT I

Section 94-b of the Vehicle and Traffic Law does not violate the Fourteenth Amendment of the Federal Constitution.

Briefly summarized, Section 94-b imposes two conditions upon the possession of a driver's license and an automobile owner's registration certificate: (A) after final judgmentunsatisfied the license or certificate is permanently suspended unless the debtor gives proof of his ability to respond in damages for future accidents; and (B) in any event, the license or certificate is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration.

A

The requirement that the debtor furnish "proof of his ability to respond in damages for future accidents" is valid.

This condition presents little difficulty under the Fourteenth Amendment. The right of the legislature to enact a "compulsory automobile insurance statute" is recognized.

Ex parte Poresky, 290 U. S. 30 (1933).

There appears to be no constitutional objection to postponing the requirement that insurance be furnished until after an accident has occurred and liability proved and unsatisfied. To subject to that requirement only those persons who have suffered judgments to be rendered against them, it is submitted, is reasonable classification. The legislature may well conclude that those who have

caused uncompensated injury are unfit to drive unless they carry liability insurance.

See *Packard* v. *Banton*, 264 U. S. 140 (1924);

Hodge Co. v. *Cincinnati*, 284 U. S. 335 (1932);

Continental Baking Co. v. *Woodring*, 286 U. S. 352 (1932).

But in a larger sense there is no classification. All who accept the license in the first instance are subject to the same terms and conditions. All are warned that if an accident occurs and liability is established and unsatisfied, insurance for the future must be furnished. This is equality of treatment.

B.

The provision that the license is suspended for such part of three years as the judgment remans unsatisfied, unless the creditor consents to its restoration, is valid.

Originally, the statute required that the judgment must be satisfied before the license could be restored. The three year limitation on the suspension and the provision permitting restoration for six months or more with the creditor's consent were the result of subsequent amendments. (L. 1936, ch. 293, 448.) It is submitted that nothing in the Fourteenth Amendment invalidates these provisions.

Judge Learned Hand, speaking for the majority of the Court below, sustained their validity on this ground (R. 7-8):

> "The effect of this was to make the license security for any damage done through the licensee's carelessness, and that was well calculated to increase his care. Indeed—though long use has accustomed us to its acceptance—perhaps insurance against personal fault without some attendant means of enforcing care (such as exists, for example, in the case of marine insurance) always serves somewhat to dampen caution: at least reasonable people might think so, and for that reason a legislature might forbid any insurance whatever against the first few thousand of dollars of liability for negligent driving so that drivers should have a pecuniary incentive to avoid collision."

Judge Patterson, speaking for a unanimous three judge court, which earlier held Section 94-b constitutional, used similar language:

> "The New York legislature may well have considered that such a regulation would have a tendency to reduce casualties on the roads by making owners and operators of automobiles exercise greater care than formerly in order to prevent the entry of such judgments against them. The means adopted by the legislature have a reasonable substantial relation to the end in view, public safety on the highway, which is equivalent to saying that the act is a valid exercise of the police power."
>
> *Munz* v. *Harnett*, 6 F. Supp. 158, 160 (1933).

The many state courts which have passed on similar statutes have all employed like reasoning in sustaining their validity.

See *In re Opinion of the Justices*, 251 Mass. 617, 147 N. E. 680 (1925);

Watson v. *State Division of Motor Vehicles*, 212 Cal. 299, 298 P. 481 (1931);

Sheehan v. *State Division of Motor Vehicles*, 140 Cal. App. 200, 35 P. (2) 359 (1934);

Garford Trucking Co. v. *Hoffman*, 114 N. J. L. 522, 177 A. 882 (1935);

State ex rel. Sullivan v. *Price*, 49 Ariz. 19, 63 P. (2) 653 (1937);

Nulter v. *State Road Commission of W. Virginia*, 119 W. Va. 320, 193 S. E. 549 (1937);

Sullins v. *Butler*, 175 Tenn. 468, 135 S. W. (2) 930 (1940);

Rosenblum v. *Griffin*, 89 N. H. 314, 197 A. 701 (1938).

It is submitted, however, that this is not the sole line of reasoning which will defend the provision permitting revocation until the judgment is satisfied. The provision is immune from attack under the Fourteenth Amendment even if its sole purpose is to insure compensation to the injured creditor.

By hypothesis, the legislature could have required as a condition to the operation of a vehicle that the licensee furnish insurance. (*Ex parte Poresky, supra.*) It is recognized that the purpose of such legislation is to secure compensation to the victims of negligent operators.

> *Sprout* v. *City of South Bend*, 277 U. S. 163, 171 (1928);
>
> *In re Opinion of the Justices*, 81 N. H. 566, 129 A. 117 (1925), cited with aproval in *Ex parte Poresky, supra.*

There appears no reason under the Fourteenth Amendment why the legislature may not seek to accomplish the same result after the accident has occurred, and why the same means may not be used to accomplish this result—namely, the denial of the privilege to operate a vehicle.

> *see Rosenblum* v. *Griffin*, 89 N. H. 314, 197 A. 701 (1938).

Thus, whether viewed before the accident occurs as an inducement to safe driving or viewed after the accident occurs as a means to compensate the injured, the provision for suspension until judgment is satisfied is valid. No constitutional rights of the debtor are denied, then, if the legislature chooses to mitigate the rigor of the suspension by limiting it to three years or until the creditor consents to the restoration of the license.

POINT II

Section 94-b of the Vehicle and Traffic Law does not violate either Article I, Section 8, Clause 4 of the Federal Constitution or Section 17 of the Bankruptcy Act.

Article I, Section 8, Clause 4, of the Federal Constitution provides:

> "The Congress shall have power . . . to establish uniform laws on the subject of bankruptcies throughout the United States."

Pursuant to this power Congress has enacted the Bankruptcy Act (28 U.S.C.A.), Section 1 (12) of which provides (28 U.S.C.A. Section 1):

> "'Discharge' shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are expected by this title."

Section 17 (28 U. S. C. A. Section 35) further provides:

> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . ."

with certain exceptions not here material.

Apparently appellant contends that Section 94-b is invalid because it deprives him of the "full benefit of a discharge in bankruptcy, to which he is entitled under the Constitution of the United States and the Bankruptcy Act." (R. 29.) Whether Section 94-b deprives the appellant of the benefit of a discharge depends in turn upon what benefit Congress intended to bestow upon the debtor through the bankruptcy discharge.

A

Section 17 is intended merely to afford a defense to an action on the discharged judgment.

It is submitted that Congress intended merely to "release the bankrupt from legal liability to pay a debt that was provable in bankruptcy . . ." (*Zavelo* v. *Reeves*, 227 U. S. 625, 629 [1913]); merely to "afford to the debtor a complete legal defense to an action on such debt if he chooses to avail himself of it." (*Federal National Bank* v. *Koppel*, 253 Mass. 157, 148 N. E. 379 [1925].)

Certainly it will not be argued that Section 94-b is intended to, or does, deprive the debtor of his defense to an action on the judgment. The debtor is still free to assert his discharge as a defense in any court in such an action.

See also

Dimock v. *Revere Copper Co.*, 117 U. S. 559 (1886).

B

Section 17 is not intended to interfere with state legislation whose incidental effect is to compel the payment of a discharged judgment.

It is recognized, however, that Section 94-b does have the effect of inducing the debtor to pay the judgment. Appellant submits, nevertheless, that the statute is still valid, for Section 17 of the Bankruptcy Act is not intended to prevent state statutes having that incidental effect.

Judge Hand below expressed the thoughts of the majority on this point as follows (R. 8-9):

". . . if Sec. 17 must be read as relieving bankrupts of all sanctions for the collection of dischargeable debts, no matter what other public purpose they may serve, the section is invalid, for the Bankruptcy Act is paramount. We do not think that the section so much impedes the states in their polity. Inability to pay one's debts is not irrelevant in determining one's fitness for many kinds of activity. In *In Re Hicks*, 133 Fed. 739, for example, a city ordinance had provided that no one should be a municipal fireman who did not pay his debts, and the court held the ordinance invalid because it conflicted with the Bankruptcy Act. The ruling seems to us plainly wrong; the city might have good reasons for excluding from a position so vital to its welfare men who were so irresponsible that they would not live within the salaries given them. The fact that in doing so, the ordinance necessarily acted as a sanction for the collection of the debts was not material; the city was still entitled to make its own standards for admission to its fire department. The same reasoning applies here. Drivers of motorcars are a selected class, and of these those who suffer judgments for faulty driving are presumably less likely to be safe drivers than the average. Out of this number to discipline only those who cannot pay judgments against them, might rationally be a further step in the same direction, for it is not unreasonable to say that among careless drivers, those are apt to be more careless who have no financial interest at stake. It is enough if the standard chosen

> works well on a whole; legislation is inevitably a more or less rough process, and need aim at no more than average success."

Judge Patterson, speaking for the unanimous Court in *Munz* v. *Hartnett*, 6 F. Supp. 158 (1933), expressed the same theory somewhat differently: (p. 160)

> "The same reasons that support this legislation against attack on general constitutional grounds support it against this attack; namely, that it may well tend to cause operators and owners of automobiles to take pains so as not to have a judgment growing out of negligent driving entered against them."

See also

Rineer v. *Boardman*, 32 D. C. 27, 45 Dauph. 78 (Pa. 1938), holding a similar Pennsylvania statute constitutional;

In Re Petition of Balinski (Circ. Court of Wayne Co. Mich. 1939), reported in C. C. H. Bankruptcy Law Service, Pgh. 51,869, holding a similar Michigan statute constitutional.

This Court has recognized the validity of state legislation which authorizes the bankrupt to be punished for contempt in proceedings supplementary to execution on a judgment, and which further orders the fine imposed on the bankrupt for the contempt to be paid to the judgment creditor.

Spalding v. *New York*, 4 How. 21 (1846);

See also

In re Koronsky, 170 Fed. 719 (1909);

People ex rel. Otterstedt v. *Sheriff of Kings County*, 206 Fed. 566 (1913);

In re Spagat, 4 F. Supp. 926 (1933).

In such cases the payment to the judgment creditor, whose judgment has been discharged, is not an "incidental possible effect" of the state legislation but is the desired compelled effect. And yet the validity of the legislation as against the Bankruptcy Act is sustained, on the theory, as the Court in *In re Koronsky, supra*, said:

> "Manifestly the offense was one peculiarly against the court, and of the sort where the punishment of the offender is a vindication of the dignity of the court; it does not lose that character because the statute authorizes the court to turn over the amount of the fine when collected to some person pecuniarily aggrieved by the offender's conduct."

If the Bankruptcy Act does not prevent legislation protecting the dignity of the state courts, it is submitted that Act likewise does not prevent legislation protecting the travellers on the state highways, although the incidental effect of the legislation in both instances may be the payment of a discharged judgment.

cf. *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939).

C

Section 94-b is valid even if its sole purpose is compensation to the judgment creditor.

Let it be assumed, however, contrary to the finding of the lower Court and of all the State Courts which have sustained similar legislation, that the legislature did not think and could not have thought that Section 94-b might rationally tend to increase care on the part of licensees. Let it be

assumed, therefore, that Section 94-b was intended solely to compel the payment of compensation to the aggrieved creditor. It is respectfully submitted that the statute is still valid, despite the Bankruptcy Act.

Again, by hypothesis, the legislature could have required as a condition to the operation of a vehicle that the licensee furnish insurance. (*Ex parte Poresky, supra*). For reasons not here material, but among which may be suggested the large rural population in New York, the legislature did not choose to saddle all licensees with the burden of insurance. Instead, it chose the mechanism of Section 94-b, permitting absolute freedom to the licensee until judgment day, when the penalties became operative. At the same time, however, the legislature gave the licensee an option; it permitted him to avoid the penalties of Section 94-b by taking out a motor vehicle liability policy. (This is the substance of the last clause of the section, and was probably intended to get away from the decision in *Jones* v. *Harnett*, 247 A. D. 7, 286 N. Y. Supp. 220 (1936), affirmed in 271 N. Y. 626, 3 N. E. (2) 155 (1936).

Is it unconstitutional for the State to use its licensing power to insure the payment of a judgment (assuming that is the only permissible interpretation of Section 94-b) under these circumstances? Is it unconstitutional for the legislature to warn a licensee that it will use its "compulsory insurance" power "in reverse", when at the same time it permits the prospective judgment debtor to escape that penalty by voluntarily taking out insurance in advance? It is respectfully submitted

that nothing in the Bankruptcy Act prevents the legislature from imposing this sanction to collect a judgment when at the same time it offers relief from that sanction through voluntary conduct which it could constitutionally compel.

In asking the Court to approve Section 94-b appellee does not press the legal theory, accepted by the highest courts of some states, that the legislature may prohibit the use of motor vehicles upon the highways or streets, and, therefore, the operation of an automobile is a privilege which the legislature may grant upon any condition it chooses to impose.

> See e. g., *People* v. *Rosenheimer*, 209 N. Y. 115, 102 N. E. 530 (1913);
> *State* v. *Sterrin*, 78 N. H. 220, 98 A. 482 (1916);
> *In re Opinion of the Justices*, 251 Mass. 569, 147 N. E. 681 (1925), cited with approval in *Ex parte Poresky*, *supra*.

Certainly, however, if any such doctrine were adopted, it would sanction not only Section 94-b but even legislation that required as a condition to the granting of the license an agreement that the licensee would not plead his discharge in an action on the judgment.

> See dissenting opinion of Holmes, J., in *Power Manufacturing Co.* v. *Saunders*, 274 U. S. 490, 497 (1927).

CONCLUSION*

Section 94-b is probably not the last word in New York in this field of motor vehicle legislation. Already there have been recommendations to adopt statutes patterned on the more stringent and burdensome provisions of the New Hampshire (See *Rosenblum* v. *Griffin*, *supra*) or Massachusetts statutes. Certainly before the legislature adopts either of these methods of regulation it should be convinced that the present legislation does not have the desired results. Only that reason rather than any notion of unconstitutionality, it is respectfully submitted, should cause Section 94-b to be discarded.

The order and judgment appealed from should be affirmed.

Respectfully submitted,

JOHN J. BENNETT, JR.,
Attorney-General of the
State of New York,
Attorney for Appellee.

HENRY EPSTEIN,
Solicitor-General.

JACK GOODMAN,
Assistant Attorney-General,
Of Counsel.

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* At the writing of this brief, appellee has still not been served with a copy of appellant's brief. Appellee furnishes this information to the Court merely to explain the significant absence in this brief of any reference to the arguments or authorities which appellant may use in support of his points.

APPENDIX

For the information of the Court, we catalogue the following notes in legal periodicals, reviewing the decisions in this field:

34 Columbia Law Review 555 (1934)
19 Cornell Law Quarterly 278 (1934)
47 Harvard Law Review 870 (1934)
39 Michigan Law Review 645 (1941)
8 University of Chicago Law Review 326 (1941)
5 University of Pittsburgh Law Review 26 (1938)
43 Yale Law Journal 344 (1933)

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 21

GEORGE C. REITZ,

Appellant,

against

CARROLL E. MEALEY, as Commissioner of Motor Vehicles of the State of New York,

Appellee.

BRIEF FOR APPELLEE ON REARGUMENT

JOHN J. BENNETT, JR.,
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JACK GOODMAN,
Assistant Attorney General,
Of Counsel.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

INDEX TO BRIEF.

Table of Cases.

Table of Cases

Statutes

IV.

Legal Periodicals

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BRIEF FOR APPELLEE

THE OPINIONS OF THE COURT BELOW

The opinion of Judge Learned Hand, concurred in by Judge Coxe, is reported in 34 F. Supp. 532 at p. 533, and appears at pp. 6-10 of the Transcript of Record. The dissenting Opinion of Judge Cooper is reported in 34 F. Supp. 532 at p. 535, and appears at pp. 11-22 of the Transcript of Record.

JURISDICTION

This Court on February 3, 1941, entered an order noting probable jurisdiction in this case.

Jurisdiction appears to exist by virtue of Judicial Code, Secs. 238 and 266 (28 U. S. C. A., Secs. 345 and 380). The appeal is from a final order and judgment of a three judge district court, convened pursuant to Section 266 of the Judicial Code, dismissing a complaint which seeks to enjoin the enforcement of a statute of the State of New York by restraining the action of a state officer upon the ground of the unconstitutionality of such statute.

STATEMENT OF THE CASE

This is an action brought to enjoin the Commissioner of Motor Vehicles of the State of New York from enforcing a suspension of the appellant's driver's license as a chauffeur. The order suspending the license (R. 4A-4B) was issued on May 29, 1940 pursuant to Section 94-b of the Vehicle and Traffic Law of New York (Cons. Laws, c. 71). The occasion for the order of suspension was the receipt by the appellee, the Commissioner, from the Clerk of the Supreme Court of Albany County of a transcript of a judgment, with evidence of its finality and nonpayment, rendered against the appellant in the sum of Five Thousand One Hundred Thirty-Eight Dollars and Twenty-five Cents ($5,138.25) (R. 2). The judgment had been obtained in an action to recover damages for personal injuries arising out of the operation of an automobile by the appellant herein (R. 1).

On June 21, 1940 the appellant was adjudicated a bankrupt and his proceeding in bankruptcy was duly referred (R. 1). Among his debts scheduled therein was the above described judgment (R. 1). At the com-

mencement of this action the question of appellant's discharge had not yet been determined (R. 1). It is admitted, however, that this judgment is dischargeable in bankruptcy.

The case comes to this Court on appeal from a final order and judgment of the District Court of the United States for the Northern District of New York, three judges sitting, dismissing the complaint (R. 22).

Appellant asserts the unconstitutionality of Section 94-b of the Vehicle and Traffic Law of New York on the ground that it violates (a) both Article 1, Sec. 8, Clause 4 and the Fourteenth Amendment of the Constitution of the United States, and (b) Section 17 of the Bankruptcy Law (11 U. S. C. A. Sec. 35).

The Statute

Section 94-b of the Vehicle and Traffic Law, as last amended by L. 1939, ch. 618, provides:

> "*Sec. 94-b. Failure to satisfy judgments; revocation of licenses and security.*
>
> The operator's or chauffeur's license and all of the registration certificates of any person, in the event of his failure within fifteen days thereafter to satisfy every judgment in excess of one hundred dollars which shall have become final by expiration without appeal, of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in this state, or in any other state or the District of Columbia, or of any district court of the United States, or by a court of competent jurisdiction in any province of the Dominion of Canada, for damages on account of personal injury, including death, or damages to property, resulting from the ownership,

maintenance, use or operation of a motor vehicle by him, his agent, or any other person for whose negligence he shall be liable and responsible, shall be forthwith suspended by the commissioner of motor vehicles, upon receiving a certified copy of such final judgment or judgments from the court in which the same are rendered, showing such judgment or judgments to have been still unsatisfied after the expiration of fifteen days after the same became final as aforesaid, and, except as otherwise provided in this chapter, shall remain so suspended and shall not be renewed nor shall any other motor vehicle be thereafter registered in his name while any such judgment or judgments remain unstayed, unsatisfied and subsisting, until either said judgment or judgments are satisfied or discharged, except by a discharge in bankruptcy, to the extent of at least five thousand dollars for an injury to one person in one accident, and to the extent of ten thousand dollars for an injury to more than one person in one accident, and to the extent of one thousand dollars for an injury to property in any one accident or three years shall have elapsed since such suspension, and until the said person gives proof of his ability to respond in damages, as required in section ninety-four-o of this chapter for future accidents. Provided, however, if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter. It shall be the duty of the clerk of the court, or of the court, where it has no clerk, in which any such judgment is rendered, to forward immediately, upon written demand of the judgment creditor or his attorney, after the expiration of said fifteen days as aforesaid, to such commissioner a certified copy of such judgment or transcript thereof. In the event the defendant is a non-resident it shall be the duty of

the commissioner to transmit to the commissioner of motor vehicles or other officer or officers having in charge the licensing of chauffeurs and operators and the registration of motor vehicles of the state or of any province of Canada of which the defendant is a resident, a certified copy or copies of the said judgment. If after such proof has been given, any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, such license and certificates shall again be and remain suspended and no other such license or certificate shall be issued to such person while any such judgment remains unsatisfied and subsisting, provided, however, that

(1) When five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident, or

(2) when subject to the limit of five thousand dollars for each person, the sum of ten thousand dollars has been credited upon any judgment or judgments in excess of that amount for personal injury to or the death of more than one person as the result of any one accident, or

(3) when one thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle by such judgment debtor, his agent or by any other person for whose negligence the owner shall be liable and responsible, then and in such event, such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purpose of this section only.

If any such motor vehicle owner or operator shall not be a resident of this state, the privilege of operation within the state of any motor vehicle owned by him shall be withdrawn, while any final judgment against him as aforesaid, shall be unstayed, unsatisfied and subsisting for more than fifteen days, as aforesaid and shall not be renewed,

nor shall any operator's or chauffeur's license be issued to him nor any motor vehicle registered in his name until either every such judgment shall be stayed, satisfied or discharged as herein provided or three years shall have elapsed since such withdrawal, and until such person shall have given proof of his ability to respond in damages for future accidents, as required in the next section. This section shall not apply to any judgment where the cause of action arose prior to September first, ninteen hundred and twenty-nine.

No license or registration certificate shall be suspended pursuant to this section if, at the time the cause of action resulting in the judgment arose, the vehicle whose maintenance, use or operation caused the damage was covered by a surety bond or an insurance policy issued pursuant to section seventeen of this chapter or by an insurance policy, issued by a company authorized to do business in this state, insuring the owner and operator thereof against loss from the liability imposed by law for injury to persons or property to the amount of five thousand dollars on account of bodily injury to or death of any one person, to the amount of ten thousand dollars on account of bodily injury to or death of more than one person caused by any one accident and to the amount of one thousand dollars for damage to property and no license shall be suspended pursuant to this section if the holder thereof, at the time the cause of action resulting in the judgment arose, was insured under a motor vehicle liability policy as defined in this article, and these provisions shall be both prospective and retrospective."

Although it has been amended many times since first enacted in 1929 (L. 1929, ch. 695), the substance of Section 94-b has remained the same. Because both opinions of the Court below, however, stressed certain amendments to the statute, we catalogue the more significant ones since 1929:

1. L. 1930, ch. 398—Added the provision that it shall be the duty of the Commissioner of Motor Vehicles to transmit a copy of the judgment to the Province of Canada if the defendant is a resident of Canada.
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4. L. 1936, ch. 293—Added the provision that the suspension of the license would be lifted if "three years shall have elapsed since such suspension." Thus, this amendment furnished an alternative to the existing provision that the suspension would be lifted if the judgment were satisfied or discharged.
5. L. 1936, ch. 448—Added the provision that "if the judgment creditor consents in writing that the judgment debtor be allowed license and registration, the same may be allowed for six months from the date of such consent by the commissioner and thereafter until such consent is revoked in writing, if proof of ability to respond in damages is furnished in accordance with the provisions of this chapter."

6. L. 1936, ch. 771—Added the proviso that "the provisions of this section shall not be construed to affect a registration certificate or the license issued to the owner, operator or chauffeur of a motor vehicle engaged in the business of carrying passengers for hire who has procured an indemnity bond or insurance policy and who continues to provide such bond or policy pursuant to Section 17 of this chapter."
7. L. 1937, ch. 114—Deleted the above provision and substituted in its place the paragraph now constituting the last paragraph in Section 94-b. This provides in substance that no license or registration certificate may be suspended if at the time of the accident the motor vehicle or operator was covered by liability insurance in the statutory amounts.
8. L. 1937, ch. 463—Restricted the section to judgments "in excess of one hundred dollars." Formerly the section applied to all judgments for personal injuries and judgments in excess of one hundred dollars for property damage.
9. L. 1939, ch. 618—Amended the provision dealing with transmission of a copy of the judgment to the Commissioner of Motor Vehicles to provide that it shall be the clerk's duty to forward the judgment "upon written demand of the judgment creditor or his attorney."

SUMMARY OF ARGUMENT

I. Section 94-b of the Vehicle and Traffic Law does not violate the Fourteenth Amendment of the Federal Constitution.

A. The requirement that the debtor furnish "proof of his ability to respond in damages for future accidents" is valid.

B. The provision that the license is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration, is valid.

II. Section 94-b of the Vehicle and Traffic Law does not violate either Article I, Section 8, Clause 4 of the Federal Constitution or Section 17 of the Bankruptcy Act.

A. Section 17 is intended merely to afford a defense to an action on the discharged judgment.

B. Section 17 is not intended to interfere with State legislation whose incidental effect is to compel the payment of a discharged judgment.

C. Section 94-b is valid even if its sole purpose is compensation to the judgment creditor.

POINT I

Section 94-b of the Vehicle and Traffic Law does not violate the Fourteenth Amendment of the Federal Constitution.

Briefly summarized, Section 94-b imposes two conditions upon the possession of a driver's license and an automobile owner's registration certificate: (A) after final judgment unsatisfied the license or certificate is permanently suspended unless the debtor gives proof of his ability to respond in damages for future accidents; and (B) in any event, the license or certificate is suspended for such part of three years as the

judgment remains unsatisfied unless the creditor consents to its restoration.

A

The requirement that the debtor furnish "proof of his ability to respond in damages for future accidents" is valid.

This condition presents little difficulty under the Fourteenth Amendment. The right of the legislature to enact a "compulsory automobile insurance statute" is recognized.

Ex parte Poresky, 290 U. S. 30 (1933).

There appears to be no constitutional objection to postponing the requirement that insurance be furnished until after an accident has occurred and liability proved and unsatisfied. To subject to that requirement only those persons who have suffered judgments to be rendered against them, it is submitted, is reasonable classification. The legislature may well conclude that those who have caused uncompensated injury are unfit to drive unless they carry liability insurance.

See *Packard v. Banton*, 264 U. S. 140 (1924);
Hodge Co. v. Cincinnati, 284 U. S. 335 (1932);
Continental Baking Co. v. Woodring, 286 U. S. 352 (1932).

But in a larger sense there is no classification. All who accept the license in the first instance are subject to the same terms and conditions. All are warned that if an accident occurs and liability is established and

unsatisfied, insurance for the future must be furnished. This is equality of treatment.

B

The provision that the license is suspended for such part of three years as the judgment remains unsatisfied, unless the creditor consents to its restoration, is valid.

Originally, the statute required that the judgment must be satisfied before the license could be restored. The three year limitation on the suspension and the provision permitting restoration for six months or more with the creditor's consent were the result of subsequent amendments (L. 1936, ch. 293, 448). It is submitted that nothing in the Fourteenth Amendment invalidates these provisions.

Judge Learned Hand, speaking for the majority of the Court below, sustained their validity on this ground (R. 7-8):

> "The effect of this was to make the license security for any damage done through the licensee's carelessness, and that was well calculated to increase his care. Indeed—though long use has accustomed us to its acceptance—perhaps insurance against personal fault without some attendant means of enforcing care (such as exists, for example, in the case of marine insurance) always serves somewhat to dampen caution; at least reasonable people might think so, and for that reason a legislature might forbid any insurance whatever against the first few thousand of dollars of liability for negligent driving so that drivers should have a pecuniary incentive to avoid collision."

Judge Patterson, speaking for a unanimous three judge court, which earlier held Section 94-b constitutional, used similar language:

> "The New York legislature may well have considered that such a regulation would have a tendency to reduce casualties on the roads by making owners and operators of automobiles exercise greater care than formerly in order to prevent the entry of such judgments against them. The means adopted by the legislature have a reasonable substantial relation to the end in view, public safety on the highway, which is equivalent to saying that the act is a valid exercise of the police power."
>
> *Munz v. Harnett*, 6 F. Supp. 158, 160 (1933).

The many state courts which have passed on similar statutes have all employed like reasoning in sustaining their validity.

See *In re Opinion of the Justices*, 251 Mass. 617, 147 N. E. 680 (1925);

Watson v. State Division of Motor Vehicles, 212 Cal. 299, 298 P. 481 (1931);

Sheehan v. State Division of Motor Vehicles, 140 Cal. App. 200, 35 P. (2) 359 (1934);

Garford Trucking Co. v. Hoffman, 114 N. J. L. 522, 177 A. 882 (1935);

State ex rel. Sullivan v. Price, 49 Ariz. 19, 63 P. (2) 653 (1937);

Nulter v. State Road Commission of W. Virginia, 119 W. Va. 320, 193 S. E. 549 (1937);

Sullins v. Butler, 175 Tenn. 468, 135 S. W. (2) 930 (1940);

Rosenblum v. Griffin, 89 N. H. 314, 197 A. 701 (1938).

It is submitted, however, that this is not the sole line of reasoning which will defend the provision permitting revocation until the judgment is satisfied. The provision is immune from attack under the Fourteenth Amendment even if its sole purpose is to insure compensation to the injured creditor.

By hypothesis, the legislature could have required as a condition to the operation of a vehicle that the licensee furnish insurance. *(Ex parte Poresky, supra.)* It is recognized that the purpose of such legislation is to secure compensation to the victims of negligent operators.

> *Sprout v. City of South Bend*, 277 U. S. 163, 171 (1928);
>
> *In re Opinion of the Justices*, 81 N. H. 566, 129 A. 117 (1925), cited with approval in *Ex parte Poresky, supra.*

There appears no reason under the Fourteenth Amendment why the legislature may not seek to accomplish the same result after the accident has occurred, and why the same means may not be used to accomplish this result—namely, the denial of the privilege to operate a vehicle.

> See *Rosenblum v. Griffin*, 89 N. H. 314, 197 A. 701 (1938).

Thus, whether viewed before the accident occurs as an inducement to safe driving or viewed after the accident occurs as a means to compensate the injured, the provision for suspension until judgment is satisfied is valid. No constitutional rights of the debtor are denied, then, if the legislature chooses to mitigate

the rigor of the suspension by limiting it to three years or until the creditor consents to the restoration of the license.

POINT II

Section 94-b of the Vehicle and Traffic Law does not violate either Article I, Section 8, Clause 4 of the Federal Constitution or Section 17 of the Bankruptcy Act.

Article I, Section 8, Clause 4, of the Federal Constitution provides:

> "The Congress shall have power * * * to establish uniform laws on the subject of bankruptcies throughout the United States."

Pursuant to this power Congress has enacted the Bankruptcy Act (28 U. S. C. A.), Section 1 (12) of which provides (28 U. S. C. A. Section 1):

> "'Discharge' shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this title."

Section 17 (28 U. S. C. A. Section 35) further provides:

> "A discharge in bankruptcy shall release a bankrupt from all of his provable debts * * *,"

with certain exceptions not here material.

Apparently appellant contends that Section 94-b is invalid because it deprives him of the "full benefit of a discharge in bankruptcy, to which he is entitled under the Constitution of the United States and the Bankruptcy Act." (R. 29.) Whether Section 94-b deprives the appellant of the benefit of a discharge, however,

depends in turn upon what benefit Congress intended to bestow upon the debtor through tl e bankruptcy discharge.

A

Section 17 is intended merely to afford a defense to an action on the discharged judgment.

It is submitted that Congress intended merely to "release the bankrupt from legal liability to pay a debt that was provable in bankruptcy • • •" (*Zavelo v. Reeves*, 227 U. S. 625, 629 [1913]); merely to "afford to the debtor a complete legal defense to an action on such debt if he chooses to avail himself of it." (*Federal National Bank v. Koppel*, 253 Mass. 157, 148 N. E. 379 [1925].)

Certainly it will not be argued that Section 94-b is intended to, or does, deprive the debtor of his defense to an action on the judgment. The debtor is still free to assert his discharge as a defense in any court in such an action.

See also

Dimock v. Revere Copper Co., 117 U. S. 559 (1886).

B

Section 17 is not intended to interfere with state legislation whose incidental effect is to compel the payment of a discharged judgment.

It is recognized, however, that Section 94-b does have the effect of inducing the debtor to pay the judgment.

Appellee submits, nevertheless, that the statute is still valid, for Section 17 of the Bankruptcy Act is not intended to prevent state statutes having that incidental effect.

Judge Hand below expressed the thoughts of the majority on this point as follows (R. 8-9):

> "* * * if Sec. 17 must be read as relieving bankrupts of all sanctions for the collection of dischargeable debts, no matter what other public purpose they may serve, the section is invalid, for the Bankruptcy Act is paramount. We do not think that the section so much impedes the states in their polity. Inability to pay one's debts is not irrelevant in determining one's fitness for many kinds of activity. In *In Re Hicks*, 133 Fed. 739, for example, a city ordinance had provided that no one should be a municipal fireman who did not pay his debts, and the court held the ordinance invalid because it conflicted with the Bankruptcy Act. The ruling seems to us plainly wrong: the city might have good reasons for excluding from a position so vital to its welfare men who were so irresponsible that they would not live within the salaries given them. The fact that in doing so, the ordinance necessarily acted as a sanction for the collection of the debts was not material: the city was still entitled to make its own standards for admission to its fire department. The same reasoning applies here. Drivers of motorcars are a selected class, and of these those who suffer judgments for faulty driving are presumably less likely to be safe drivers than the average. Out of this number to discipline only those who cannot pay judgments against them, might rationally be a further step in the same direction, for it is not unreasonable to say that among careless drivers, those are apt to be more careless who have no financial interest at stake. It is enough if the standard chosen works well on a whole; legislation is inevitably a more or less rough process, and need aim at no more than average success."

Judge Patterson, speaking for the unanimous Court in *Munz v. Hartnett*, 6 F. Supp. 158 (1933), expressed the same theory somewhat differently (p. 160):

> "The same reasons that support this legislation against attack on general constitutional grounds support it against this attack; namely, that it may well tend to cause operators and owners of automobiles to take pains so as not to have a judgment growing out of negligent driving entered against them."

See also

Rincer v. Boardman, 32 D. C. 27, 45 Dauph. 78 (Pa. 1938), holding a similar Pennsylvania statute constitutional;

In Re Petition of Balinski (Circ. Court of Wayne Co. Mich. 1939), reported in C. C. H. Bankruptcy Law Service, Pgh. 51,869, holding a similar Michigan statute constitutional.

This Court has recognized the validity of state legislation which authorizes the bankrupt to be punished for contempt in proceedings supplementary to execution on a judgment, and which further orders the fine imposed on the bankrupt for the contempt to be paid to the judgment creditor.

Spalding v. New York, 4 How. 21 (1846);

See also

In re Koronsky, 170 Fed. 719 (1909);

People ex rel. Otterstedt v. Sheriff of Kings County, 206 Fed. 566 (1913);

In re Spagat, 4 F. Supp. 926 (1933).

In such cases the payment to the judgment creditor, whose judgment has been discharged, is not an "incidental possible effect" of the state legislation but is the desired compelled effect. And yet the validity of the legislation as against the Bankruptcy Act is sustained, on the theory, as the Court in *In re Koronsky, supra*, said:

> "Manifestly the offense was one peculiarly against the court, and of the sort where the punishment of the offender is a vindication of the dignity of the court; it does not lose that character because the statute authorizes the court to turn over the amount of the fine when collected to some person pecuniarily aggrieved by the offender's conduct."

If the Bankruptcy Act does not prevent legislation protecting the dignity of the state courts, it is submitted that Act likewise does not prevent legislation protecting the travellers on the state highways, although the incidental effect of the legislation in both instances may be the payment of a discharged judgment.

cf. *Palmer v. Massachusetts*, 308 U. S. 79 (1939).

C

Section 94-b is valid even if its sole purpose is compensation to the judgment creditor.

Let it be assumed, however, contrary to the finding of the lower Court and of all the State Courts which have sustained similar legislation, that the legislature did not think and could not have thought that Section 94-b might rationally tend to increase care on the part of licensees. Let it be assumed, therefore, that Section

94-b was intended solely to compel the payment of compensation to the aggrieved creditor. It is respectfully submitted that the statute is still valid, despite the Bankruptcy Act.

Again, by hypothesis, the legislature could have required as a condition to the operation of a vehicle that the licensee furnish insurance. *(Ex parte Poresky, supra.)* For reasons not here material, but among which may be suggested the large rural population in New York, the legislature did not choose to saddle all licensees with the burden of insurance. Instead, it chose the mechanism of Section 94-b, permitting absolute freedom to the licensee until judgment day, when the penalties became operative. At the same time, however, the legislature gave the licensee an option; it permitted him to avoid the penalties of Section 94-b by taking out a motor vehicle liability policy. (This is the substance of the last clause of the section, and was probably intended to get away from the decision in *Jones v. Harnett*, 247 A. D. 7, 286 N. Y. Supp. 220 (1936), affirmed in 271 N. Y. 626, 3 N. E. (2) 455 (1936).

Is it unconstitutional for the State to use its licensing power to insure the payment of a judgment (assuming that is the only permissible interpretation of Section 94-b) under these circumstances? Is it unconstitutional for the legislature to warn a licensee that it will use its "compulsory insurance" power "in reverse", when at the same time it permits the prospective judgment debtor to escape that penalty by voluntarily taking out insurance in advance? It is respectfully submitted that nothing in the Bankruptcy Act prevents the legislature from imposing this sanction

to collect a judgment when at the same time it offers relief from that sanction through voluntary conduct which it could constitutionally compel.

See *Ferry v. Ramsey*, 277 U. S. 88 (1928).

In asking the Court to approve Section 94-b appellee does not press the legal theory, accepted by the highest courts of some states, that the legislature may prohibit the use of motor vehicles upon the highways or streets, and, therefore, the operation of an automobile is a privilege which the legislature may grant upon any condition it chooses to impose.

See e. g., *People v. Rosenheimer*, 209 N. Y. 115, 102 N. E. 530 (1913);
State v. Sterrin, 78 N. H. 220, 98 A. 482 (1916);
In re Opinion of the Justices, 251 Mass. 569, 147 N. E. 681 (1925), cited with approval in *Ex parte Poresky*, *supra*.

Certainly, however, if any such doctrine were adopted, it would sanction not only Section 94-b but even legislation that required as a condition to the granting of the license an agreement that the licensee would not plead his discharge in an action on the judgment.

See dissenting opinion of Holmes, J., in *Power Manufacturing Co. v. Saunders*, 274 U. S. 490, 497 (1927).

CONCLUSION

At the first argument of this appeal in this Court it was suggested that Section 94-b would probably not

be the last word in New York in this field of motor vehicle legislation. This prediction has already come true. On April 29, 1941, there was enacted into law Chapter 872 of Laws 1941, which is patterned on the provisions of the New Hampshire statute (See *Rosenblum v. Griffin, supra*). Although the new statute repeals present Section 94-b as of January 1, 1942, the substance of that Section has been retained in the new legislation. Obviously the Legislature is in the process of experimentation. The next step may be the more stringent and burdensome provisions of the Massachusetts "compulsory insurance" statute. It is respectfully submitted that this Court keep open the door of experimentation and not drive the Legislature by any notion of unconstitutionality to adopt a method of regulation of the wisdom of which the Legislature is not yet convinced.

The order and judgment appealed from should be affirmed.

Respectfully submitted,

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Attorney-General of the
State of New York,
Attorney for Appellee.

HENRY EPSTEIN,
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JACK GOODMAN,
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APPENDIX

For the information of the Court, we catalogue the following notes in legal periodicals, reviewing the decisions in this field:

34 Columbia Law Review 555 (1934)

19 Cornell Law Quarterly 278 (1934)

47 Harvard Law Review 870 (1934)

39 Michigan Law Review 645 (1941)

8 University of Chicago Law Review 326 (1941)

5 University of Pittsburgh Law Review 26 (1938)

27 Virginia Law Review 828 (1941)

43 Yale Law Journal 344 (1933)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 686

GEORGE C. REITZ,

Appellant,

vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK

Appellee.

PETITION FOR REHEARING

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IN THE

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OCTOBER TERM, 1940

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GEORGE C. REITZ,
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vs.

CARROLL E. MEALEY, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK,
Appellee.

PETITION FOR REHEARING

The plaintiff, George C. Reitz, hereby makes application to the Supreme Court of the United States for a rehearing of the appeal by plaintiff in the above entitled action. On the original appeal an order was entered on April 14, 1941, affirming the judgment by an equally divided Court.

Application for rehearing is made pursuant to Rule 33 of the Rules of the Supreme Court of the United States and upon the following grounds:

1. The fact that the decision of the Supreme Court of the United States was by an equally divided Court, thus requiring automatic affirmance of the judgment of the Court below.

2. The important and vital effect of the decision upon motor vehicle financial responsibility legislation, not only in the State of New York but in every state, particularly due to the fact that the statute, Section 94-b of the Vehicle and Traffic Law of the State of New York, is the only statute pertaining to motor vehicle financial responsibility which expressly excepts a discharge in bankruptcy as a means of fully discharging a debt from the operation of said statute and if the statute complained of in this action is constitutional, other states may then add a similar provision to their statutes or Congress may deem it advisable to amend the Bankruptcy Statute.

3. On May 1, 1941, by Chapter 872 of the Laws of New York for 1941, the statute claimed unconstitutional by plaintiff in this proceeding was repealed, effective January 1, 1942. However, the plaintiff's license remains suspended for three (3) years.

4. The fact that a date, June 3, 1941, has been fixed by the Referee in Bankruptcy, setting a time within which creditors must file objections, if any, to the plaintiff's discharge in bankruptcy, so that the question of plaintiff's discharge will undoubtedly have been determined by the time of the rehearing of this appeal, should such rehearing be granted. This matter is submitted due to the fact that some of the members of this Court indicated on the argument of the appeal in this case that plaintiff's action herein was premature due to plaintiff's failure to obtain his discharge in bankruptcy prior to the commencement of plaintiff's action herein.

5. The fact that the decision of the appeal in this case having been rendered by an equally divided Court, and in view of the importance and effect of any decision in this case, it is the belief and desire of the plaintiff that the

appeal herein should be determined by a full Court, at which time a majority of the Court may concur either in reversal or affirmance of the judgment.

Respectfully submitted,

GEORGE C. REITZ,
By HARRY A. ALLAN,
Attorney for Plaintiff.

Office and Post-Office Address, 90 State Street, Albany, New York.

Verified
5/6/41.

p. 5.

SUPREME COURT OF THE UNITED STATES.

No. 21.—October Term, 1941.

George C. Reitz, Appellant,
vs.
Carroll E. Mealey, as Commissioner of Motor Vehicles of the State of New York.

On Appeal from the United States District Court for the Northern District of New York.

[November 10, 1941.]

Mr. Justice Roberts delivered the opinion of the Court.

This is a suit to restrain the appellee from enforcing a suspension of the appellant's driver's license. The complaint alleges that the order suspending the license was issued May 29, 1940, pursuant to § 94-b of the Vehicle and Traffic Law of New York,[1] upon receipt by the appellee from the Clerk of the Supreme Court of Albany County of a transcript of a judgment, accompanied by evidence of its finality and nonpayment, rendered against the appellant in the sum of $5,138.25, in an action to recover damages for personal injuries caused by appellant's operation of an automobile. It is alleged that on June 21, 1940, the appellant was adjudicated a bankrupt and his cause referred to a referee; that the judgment was scheduled as a debt; and although no discharge had been granted, the judgment is a dischargeable debt. The complaint charges that § 94-b violates the due process clause of the 14th Amendment and is rendered void by § 17 of the bankruptcy act.[2] A temporary and a permanent injunction are prayed. A restraining order issued. The answer of the appellee admits all of the relevant allegations except that the judgment was dischargeable in bankruptcy. Upon the hearing of a motion for injunction based upon the bill and answer, a court of three judges denied the injunction and dismissed the bill.[3] At the argument before us it was admitted that a discharge has been granted and that the judgment debt is thereby discharged.

[1] Consolidated Laws ch. 71.
[2] 11 U. S. C. § 35.
[3] 34 F. Supp. 532.

Section 94-b provides for suspension of the operator's license and registration certificate of any person if a judgment against him for injury to person or property resulting from the operation of a motor car be not paid within fifteen days, upon certification of the judgment, its finality, and nonpayment, to the commissioner by the county clerk. It directs the commissioner to suspend the license for three years unless, in the meantime, the judgment is satisfied or discharged, except by a discharge in bankruptcy. The suspension persists after the expiration of the three years or satisfaction of the judgment, until the licensee gives proof of his ability to respond in damages by the procurement of insurance, the giving of a bond, or the posting of a deposit.[4] The county clerk is required to certify to the commissioner any such judgment unappealed and unsatisfied for fifteen days after entry.

So the statute stood until May 4, 1936, when, by an amendatory act,[5] a proviso was added that if the creditor consents in writing, the debtor may be allowed a license and registration for six months from the date of such consent and thereafter until the consent is revoked in writing, if proof of ability to respond to damages is furnished. A further amendment of May 31, 1939[6] made it the duty of the county clerk to certify the judgment only upon written demand of the creditor or his attorney.

The purpose of the statute is clear. It is not a condition of the grant of license that the applicant shall have insurance. Instead the policy of the State is that if a driver has an accident in respect of which a judgment convicts him of negligence his license will be suspended and so remain unless he furnishes proof of his ability to respond for damage thereafter caused; and that, in any event, it will be suspended for three years unless, in the meantime, the judgment is satisfied or the creditor consents that the license be reinstated and remain in force.

First. The statute, leaving out of consideration the amendments, is not obnoxious to the due process clause of the 14th Amendment. The use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice is to register ownership of automobiles and to license their drivers. Any appropriate means

[4] See § 94-c.

[5] New York Laws, 1936, ch. 448.

[6] New York Laws, 1939, ch. 618.

adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. Some states require insurance or its equivalent as a condition of the issue of a license. New York chose to obtain the same end by providing for the revocation or suspension of a license if the holder is adjudged guilty of negligent driving. Section 94-b permits the restoration of the license upon payment or satisfaction of the judgment. As the court below has held, the effect of the statute as it stood prior to the amendment of 1936 was to make the license privilege a form of protection against damage to the public inflicted through the licensee's carelessness.[7]

Second. Prior to the amendment of 1936, the license could not be restored until three years had expired from its suspension unless the judgment were paid or discharged, except by a discharge in bankruptcy, and unless, also, the licensee furnished proof of his ability to respond in damages for any future accident.

If the statute went no further, we are clear that it would constitute a valid exercise of the state's police power not inconsistent with § 17 of the bankruptcy act. The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety.

Third. The appellant insists that the section as amended, and as it was at the time the judgment was rendered against him, violates the due process clause and runs afoul of the bankruptcy act in virtue of the power given the creditor to have the judgment certified to the commissioner of motor vehicles, that is, the power to bring § 94-b into operation, and the further power to suspend the operation of the section.

The claim of deprivation of rights without due process of law is frivolous. The State has seen fit to give the plaintiff an additional

[7] See also Munz v. Harnett, 6 F. Supp. 158.

means of enforcing the payment of a judgment for damages inflicted in the operation of a motor vehicle by dealing with the registration and license of the driver. The grant of this additional remedy is not inconsistent with the concept of due process.

A more serious question arises in connection with § 17 of the bankruptcy act. The discharge of the debtor is a defense available against a suit on the judgment and against execution process issued upon it. And there is force in the argument that § 94-b, as amended, in truth deprives the debtor of the immunity afforded by his discharge, leaves out of view the public policy of the State or makes that public policy subservient to the private interest of the creditor by affording him the opportunity to initiate, remove and revive the suspension of the license upon terms as to payments on account of his claim.

The District Court held that it need not consider the validity of the amendment of 1939 which requires the county clerk to certify the judgment only upon the request of the creditor. Under the old law it was the duty of the county clerk to certify every such judgment which had become final and remained unsatisfied for fifteen days. It is true that the bill alleges the judgment in this case was certified at the request of the plaintiff's attorney. But if the amendment is void because it confers a power on the creditor inconsistent with the effect of the debtor's discharge, and is eliminated from the statute for that reason, it still remains that under the old law the county clerk's duty to certify was mandatory, and this judgment would have been certified if he had performed his official duty.

The court also found it unnecessary to pass upon the validity of the 1936 amendment. The power of the creditor to lift the suspension and restore it during the period of three years does not appear to have been invoked in the present case. If the creditor attempts to exercise that power the commissioner will have to determine whether the amendment giving the creditor such power is valid.

The court was of the view that if the amendments are invalid as inconsistent with § 17 of the bankruptcy act, they are severable, and that the statute may stand as a complete act without them, since, under the law of New York, a statute in itself constitutional is not affected by an unconstitutional amendment;—the amendment drop-

ping out and the original act remaining in force. Decisions of the highest court of the State are cited to this effect.[8]

These decisions hold that, where the original and amending acts were enacted by different legislatures, it cannot be thought that the original act would not have been ~~passed~~ except for the amendments, and this principle has been applied where the amending act declares, as it does in this instance, that the original act is "amended to read as follows" and then contains a redraft of the entire act with the amendment inserted. Whether an amendment stands by itself as an independent enactment, or is incorporated in the setting of the act which it amends, by a provision that the act "shall read as follows:" is a matter of draftsmanship or legislative mechanics. It does not touch the substance of constitutionality.

There is no evidence of intent that if the amendments could not stand the legislation as a whole should fail. On the contrary, the legislative history discloses a persistent purpose that such a scheme for the control of motor drivers should remain. Successive and frequent amendments have dealt with details but have left intact the major features of the legislation.[9] In any case, we should accord great weight to the District Court's view of New York law. But an examination of the authorities convinces that in this case any contrary view is untenable. Since the judgment in this case would or should have been certified prior to the amendment of 1939 and since the creditor has not sought to invoke the amendment of 1936 which gives him a control over the restoration of appellant's license and its continued force during the three year suspension period, we think the court was right in abstaining from deciding whether the amendments are annulled by § 17 of the bankruptcy act.

The decree is affirmed.

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[8] *E. g.*, People v. Mensching, 187 N. Y. 8, 23; Markland v. Scully, 203 N. Y. 158; People v. Klinck Packing Co., 214 N. Y. 121; People v. Knapp, 230 N. Y. 48, 63.

[9] See Laws 1930, ch. 398; Laws 1931, ch. 669; Laws 1934, ch. 438; Laws 1936, ch. 293; Laws 1936, ch. 771; Laws 1937, ch. 114; Laws 1937, ch. 463; Laws 1939, ch. 618.

SUPREME COURT OF THE UNITED STATES.

No. 21. October Term, 1941.

George C. Reitz, Appellant,
vs.
Carroll E. Mealey, as Commissioner of Motor Vehicles of the State of New York.

Appeal from the District Court of the United States for the Northern District of New York.

[November 10, 1941.]

Mr. Justice Douglas, dissenting.

Under the statute in question it becomes the duty of the commissioner of motor vehicles to suspend the operator's license of one against whom the unsatisfied judgment has been rendered (*Matter of Jones* v. *Harnett*, 247 App. Div. 7, aff'd 271 N. Y. 626) "upon receiving a certified copy" of such final judgment from the court. McKinney's Cons. L. Bk. 62-A, § 94-b. The statute further provides that "It shall be the duty of the clerk of the court, or of the court, where it has no clerk, in which any such judgment is rendered, to forward immediately, *upon written demand of the judgment creditor or his attorney* . . . to such commissioner a certified copy of such judgment or a transcript thereof." [Italics supplied.] *Id.*

In this case the judgment creditor invoked the power which the New York legislature placed in his hands. At the request of his attorney the clerk of the court forwarded a transcript of the judgment to the commissioner who thereupon issued the order of suspension.

The power thus granted the judgment creditor contravenes § 17 of the Bankruptcy Act. Judgments on claims of the kind involved here[1] are provable (*Lewis* v. *Roberts*, 267 U. S. 467) and do not fall within any of the categories of debts excepted from discharge by § 17. Since they are dischargeable, a state cannot supply

[1] The appearance of judgments, arising out of automobile accidents, among individual bankrupts' schedules of liabilities has been common. Causes of Business Failures and Bankruptcies of Individuals in New Jersey in 1929-30, U. S. Dept. of Commerce, Don. Comm. Series No. 54, pp. 25-26 (1931); Causes of Commercial Bankruptcies, *id.*, No. 69, pp. 14-16 (1932); Causes of Bankruptcies Among Consumers, *id.*, No. 82, pp. 14-15 (1933).

a device for their collection which survives a discharge in bankruptcy. The bankruptcy power is "unrestricted and paramount"; the states "may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations." *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 265. The power which New York has placed in the hands of this judgment creditor is such an interference, though the discharge in bankruptcy be deemed to destroy only the remedy (*Zavelo* v. *Reeves*, 227 U. S. 625) not the debt.

Under the New York scheme a creditor whose claim has been discharged still holds a club over his debtor's head. The state has given him a remedy which survives bankruptcy. If the bankrupt refuses to pay his discharged debt, the creditor will see to it that his driver's license is suspended. If, however, the bankrupt will pay up, the creditor will refrain.

The practical pressures of this collection device are apparent. Where retention of the operator's license is essential to livelihood, as here alleged, the bankrupt is at the creditor's mercy. Bankruptcy is not then the sanctuary for hapless debtors which Congress intended. The bankrupt instead of receiving by virtue of his discharge "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt" (*Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244) finds himself still entangled with a former creditor.

In practical effect the bankrupt may be in as bad, or even worse, a position than if the state had made it possible for a creditor to attach his future wages. Such a device would clearly contravene the Bankruptcy Act. *Local Loan Co.* v. *Hunt*, *supra*. The present one likewise runs afoul of the Act.

But it is said that if this provision of the statute falls out, the old one falls in; and under the old one it was the duty of the clerk to certify the unsatisfied judgment to the commissioner. The difficulty with that view is that this is not that case. This bankrupt's license was suspended as a result of legal compulsion by the creditor. Whether it would have been suspended had the commissioner been advised that the amendment giving the creditor that power contravened the Bankruptcy Act is wholly conjectural. The question of whether a provision of a state statute survives an invalid amendment is a question of state law. *See Oklahoma* v. *Wells, Fargo & Co.*, 223 U. S. 298. We do not know what the

ruling of the New York courts would be under this statute. Nor do we know whether as a matter of administrative policy the clerk and the commissioner would have proceeded on the basis of the old statute or would have awaited legislative clarification. But since we do know that the bankrupt was deprived of his license by reason of a statute which conflicts with the Bankruptcy Act, we should strike down the statutory provision which in fact was invoked.

The constitutional objection to this statute, however, persists even though we assume that the bankrupt's license would have been suspended without the creditor's initiative. The act also provides that "*if the judgment creditor consents in writing that the judgment debtor be allowed license and registration*, the same may be allowed for six months from the date of such consent by the commissioner and thereafter. . . ." [Italics supplied.] I do not think we can pass over that provision on the theory that the power of the creditor to lift the suspension does not appear to have been invoked in this case and that if the creditor attempts to exercise such power the commissioner will have to pass on the constitutional issue. Meanwhile the provision in question will give to the creditor enormous leverage. His bargaining position will be greatly fortified. The bankrupt is at his mercy where the means of livelihood are at stake. If the bankrupt agrees to a settlement, makes arrangements for instalment payments, or the like, the creditor will see to it that the license is restored. If the bankrupt rests on his rights, the creditor will show no mercy. In the interim there is no way by which the bankrupt can rid himself of that pressure, unless he makes peace with the creditor; he cannot force the constitutional issue in any way other than the present suit. If the creditor agrees to lift the suspension, the bankrupt would be the last to object. In any event, the provision by that time would have spent much of its force. In short, this power which New York has given the creditor is a powerful collection device which should not be allowed to survive bankruptcy.

I agree that we should not meet a constitutional issue unless it is unavoidable. But that issue cannot be escaped here, unless we are to overlook the realities of collection methods.

Mr. Justice BLACK, Mr. Justice BYRNES and Mr. Justice JACKSON join in this dissent.